

**SOUTHWESTERN PENNSYLVANIA CORPORATION (SPC)
SOUTHWESTERN PENNSYLVANIA COMMISSION (SPC)**

**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
POLICY AND PROGRAM**

FOR USDOT-ASSISTED CONTRACTS

Prepared By:

**SOUTHWESTERN PENNSYLVANIA COMMISSION
42 21 Street, Suite 101
Pittsburgh, PA 15222**

49 CFR Part 26

February 2025

SOUTHWESTERN PENNSYLVANIA CORPORATION (SPC)
SOUTHWESTERN PENNSYLVANIA COMMISSION (SPC)

POLICY STATEMENT

Ref: 49 CFR Part 26.1,26.23

SPC has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26, as amended.

SPC receives Federal financial assistance from the USDOT and as a condition of receiving this assistance, SPC has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of SPC to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT–assisted contracts. It is also SPC’s policy:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. To ensure that SPC’s DBE program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by SPC;
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The SPC Vice-President/Deputy Executive Director/Chief Operating Officer has been designated as SPC’s DBE Liaison Officer (DBELO). In that capacity, this person is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by SPC in its financial assistance agreements with the U.S. Department of Transportation.

SPC has disseminated this policy statement to its Board of Directors and Executive Committee and through all departments of the organization. We have distributed this statement to DBE and non-DBE business communities that perform work for SPC on USDOT-assisted contracts. Distribution has been done via posting on SPC’s website:<https://www.spcregion.org/about/doing-business-with-spc/>.



Rich Fitzgerald
President, Executive Director and CEO

7/1/2024

Date

Subpart A – General Requirements

Objectives

Ref: 49 CFR Part 26.1

The objectives of SPC’s DBE program are detailed in the policy statement on the first page of this document.

Applicability

Ref: 49 CFR Part 26.3

SPC is a recipient of USDOT funds as listed below; therefore, SPC’s DBE program applies to all USDOT-assisted contracts, subcontracts and subrecipient agreements.

- (1) Pass-through Federal-aid highway planning funds authorized under the Fixing America’s Surface Transportation (FAST) Act legislation;
- (2) Direct recipient of Federal transit planning funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405, and the Fixing America’s Surface Transportation (FAST) Act legislation; and
- (3) Airport funds authorized by 49 U.S.C. 47101, et seq.

The program does not apply to:

- (1) contracts on which work is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands; and
- (2) contracts on which USDOT-financial assistance is not used.

Definitions

Ref: 49 CFR Part 26.5

The definitions used in SPC’s DBE program have the meanings defined in 49 CFR Part 26.5 as amended.

Nondiscrimination

Ref: 49 CFR Part 26.7

- (a) SPC will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.
- (b) In administering its DBE program, SPC will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

Record-Keeping and Reporting Requirements

Ref: 49 CFR Part 26.11

SPC will maintain contract and financial records for use in compliant reporting to U.S. Department of Transportation (USDOT) and Pennsylvania Department of Transportation (PennDOT) as detailed in Attachment A.

SPC will keep records and report DBE participation as follows:

For Pennsylvania Department of Transportation (PennDOT) contracted, pass-through Federal Highway Administration (FHWA) and Federal Transit Administration (FTA) federal aid funds, SPC will report to PennDOT, as instructed, all DBE participation for each Unified Planning Work Program (UPWP) planning project. These reports will reflect payments actually made to DBE's on USDOT-assisted contracts.

For Federal Transit Administration (FTA) grants/assisted funding, SPC will maintain data and report DBE participation as follows and will follow SPC Procedures for DBE Record Keeping, Reporting and Participation Determination as found in Attachment A:

- (1) will submit the Uniform Report of DBE Awards or Commitments and Payments at intervals required by terms and conditions of grants/assistance received.
- (2) will continue to provide data about SPC's DBE program to the Department as directed by USDOT operating administrations.
- (3) will create and maintain a bidders list as described below.
- (4) will maintain records documenting contractor's and subcontractor's compliance with the requirements of 49 CFR Part 26.

Bidders List

Ref: 49 CFR Part 26.11[c]

SPC maintains a bidders list containing information about all DBE and non-DBE firms that have submitted a proposal or quote on SPC's USDOT and PennDOT-assisted contracts. In addition to other attributes, SPC's bidders list includes the firm name, firm address, DBE/non-DBE status of the firm, age of the firm, and annual gross receipts of the firm.

SPC's bidders list, including NAICS codes, identifies firms that have bid on SPC contracts or that have requested to be notified of appropriate bid opportunities in the future. SPC collects bidders list information from all prime bidders and potential subcontractors that submit a proposal package or statement of qualifications package in response to a SPC RFP/RFQ or that submit a quote in response to a SPC small purchase for services procurement. SPC's bidders list data form (Attachment B) is also available on SPC's website to be completed by any firm that is interested in being notified of SPC's RFP/RFQ postings.

- (1) The purpose of the bidders list is to provide SPC with as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on SPC's Federally-assisted contracts for use in helping SPC set its overall goals.

(2) SPC obtains the following information, at a minimum, about DBE and non-DBE contractors and subcontractors who seek to work on SPC's Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. This information is obtained by asking each firm to indicate into what gross receipts bracket they fit (less than \$500,000; \$500,000 to \$1,000,000; \$1,000,000 to \$2,000,000; \$2,000,000 to \$5,000,000; and greater than \$5,000,000) rather than requesting an exact figure from the firm.

(3) SPC acquires bidders list information in various ways that meets its needs. SPC's bidders list data forms are completed by all prime bidders and potential subcontractors that submit a proposal package or statement of qualifications package in response to a SPC RFP/RFQ or that submit a quote in response to a SPC small purchase for services procurement. SPC's bidders list data form is also available on SPC's website to be completed by any firm that is interested in being notified of SPC's RFP/RFQ postings (<https://www.spcregion.org/about/doing-business-with-spc/>).

Federal Financial Assistance Agreement

Ref: 49 CFR Part 26.13

SPC has signed the following assurance, applicable to all U S DOT-assisted contracts and their administration:

Assurance

SPC will not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. SPC will take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. SPC's DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms will be treated as a violation of this agreement. Upon notification to SPC of its failure to carry out its approved program, the USDOT may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.)

Contractor Contract Assurance

SPC will ensure that the following clause is placed in every USDOT-assisted prime contractor contract and in each subcontract that the prime contractor signs with subcontractors:

The contractor, sub-recipient, or subcontractor will not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor will carry out applicable requirements of 49 CFR Part 26 in the award and administration of U S DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as SPC deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly or quarterly progress payments;*
- (2) Assessing sanctions;*
- (3) Liquidated damages; and/or*
- (4) Disqualifying the contractor from future bidding as non-responsible.*

Subpart B – Administrative Requirements

DBE Program Updates

Ref: 49 CFR Part 26.21

SPC will continue to carry out its DBE program until all funds from U S DOT financial assistance have been expended. SPC will provide USDOT with updates representing significant changes to the DBE program.

DBE Liaison Officer (DBELO)

Ref: 49 CFR Part 26.25

SPC has designated the following individual as its DBE Liaison Officer:

Jennifer Liptak
SPC Vice-President/Deputy Executive Director/Chief Operations Officer
42 21st Street, Suite 101
412-391-5590, jlptak@spcregion.org

In that capacity, the DBELO is responsible for implementing all aspects of SPC's DBE program and ensuring that SPC complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to SPC's Chief Executive Officer concerning DBE program matters. An organizational chart displaying the DBELO's position within SPC's overall organizational structure is found in Attachment C of this document.

The DBELO is responsible for developing, implementing, and monitoring SPC's DBE program in coordination with other appropriate officials. The SPC Finance Director and her/his staff assist the DBELO in the administration of SPC's DBE program. The duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by USDOT.
- Reviews third party contracts and purchase requisitions for compliance with this DBE program.
- Works with all departments to provide information concerning overall annual goals.
- Ensures that requests for proposals (RFPs) and requests for qualifications (RFQs) are available to DBEs in a timely manner.
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment) and identifies ways to improve progress.
- Analyzes SPC's progress toward attainment of annual performance goals and identifies ways to improve progress.
- Participates in pre-bid meetings, as needed.
- Informs the CEO on DBE matters and achievements.

DBE Financial Institutions

Ref: 49 CFR Part 26.27

It is the policy of SPC to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions.

SPC utilizes the Pennsylvania Association of Community Banks – “The Pennsylvania Financial Institutions Directory & Fact Book” and the PAUCP online directory in order to identify such institutions. To date, no such institutions have been identified. SPC will reevaluate the availability of such institutions at the renewal of each program cycle.

Prompt Payment Mechanism

Ref: 49 CFR Part 26.29

SPC includes the following clause in all USDOT-assisted contract documents:

“The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 30 days after receipt of each payment the prime contractor receives from SPC. The prime contractor further agrees to return retainage payments to each subcontractor within 30 days after the subcontractor’s work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following prior written approval of SPC. This clause applies to both DBE and non-DBE subcontractors.”

If, for any reason, SPC fails to provide written approval of postponed or deferred payment on the part of the prime contractor, SPC will proceed with appropriate legal action in support of its own interests in the performance of the subcontracted work.

Contract Procurement

The following procedures are followed for all USDOT-assisted procurements for contractor services contracts:

- Completion of a SPC Purchase Order Request Form and other related forms and Approval Process
- Draft Contract Review and Approval
- Final Contract Review, Approval, and Execution

The following is a brief summary of each of the steps listed above:

SPC Purchase Order Request/Approval Process

The Southwestern Pennsylvania Corporation’s (SPC’s) Comprehensive Competitive Procurement Process contains specific instructions to be followed for any and all types of procurements. Processes are defined for: Micro-Purchases (less than \$10,000); Small Purchases (\$10,001 to \$250,000) requiring 3-5 written price quotes; Competitive Proposals (RFPs/RFPs); Sole Source procurements; On-Call Consultancy Services Work Orders; and Sub Award procurements. All proposed purchases require the purchasing agent to complete a SPC purchase order request

form (see Attachment D) including a description of the goods or services to be procured, the procurement type, whether or not the proposed vendor is a PAUCP-registered DBE, and a plan for how the purchase will be completed. These forms are reviewed and approved by: the SPC Project Manager; the SPC Finance Manager, the SPC Department Director; the SPC Finance Director; and the SPC Deputy Executive Director.

Each individual procurement made on behalf of SPC follows a specific process depending on the type of procurement. A purchase is not made until all of the required procurement documentation has been reviewed and approved by: the SPC Project Manager, the SPC Finance Manager, the SPC Department Director, the SPC Finance Director, and the SPC Deputy Executive Director.

Draft Contract Review and Approval

Each approved purchase order is designed to generate an obligation and/or agreement. In the case of Micro, Small purchases (for goods), and sole source procurements, these agreements are constituted on the basis of SPC's purchase order execution, invoicing and standard payment accounting processes. For contractor service procurements (Small purchases, RFP/Rfq, and Sub Award agreements), a formal contract is drafted and executed. Draft contract documents are developed by the SPC Finance Manager and/or the SPC Grant and Contract Administrator, and reviewed by the SPC Finance Director and the SPC Deputy Executive Director prior to execution.

Final Contract Review, Approval, and Execution

Contract awards are made only to "responsible" contractors possessing the ability, willingness, and integrity to perform successfully under the terms and conditions of the contract.

Responsibility is determined by SPC after receiving quotes or proposals but prior to making contract award and according to the following minimum criteria:

The contractor is determined:

- To have a satisfactory record of integrity and business ethics;
- Is neither debarred nor suspended from Federal programs under USDOT regulations;
- Is in compliance with the Common Grant Rules' affirmative action and FTA's Disadvantaged Business Enterprise requirements;
- Is in compliance with the public policies of the Federal Government;
- Has the necessary organization, experience, accounting, operational controls, and technical skills, or the ability to obtain them;
- Is in compliance with applicable licensing and tax laws and regulations;
- Has, or can obtain, sufficient financial resources to perform the contract;
- Has, or can obtain, the necessary production, construction, and technical equipment and facilities;
- Is able to comply with the required delivery or performance schedule; and
- Is able to provide satisfactory current performance record, and a satisfactory past performance record in view of its records.

Prior to contract execution, final contract documents are reviewed by the SPC Finance Director and the SPC Deputy Executive Director.

DBE Directory

Ref: 49 CFR Part 26.31

SPC relies on the data found in the Pennsylvania Unified Certification Program (PAUCP) online directory. The purpose of the PAUCP is to provide “one-stop shopping” for firms seeking certification as a Disadvantaged Business Enterprise (DBE) in accordance with 49 CFR Part 26 and as an Airport Concession Disadvantaged Business Enterprise (ACDBE) in accordance with 49 CFR Part 23. The PAUCP makes certification decisions on behalf of various agencies and organizations in the Commonwealth with respect to participation in the DBE and ACDBE Programs. SPC utilizes the current PAUCP online directory as the listing of certified DBE firms.

Overconcentration

Ref: 49 CFR Part 26.33

SPC has not identified that overconcentration exists in the types of work that DBE’s perform. SPC will re-evaluate for overconcentration as a normal part of the three-year goal-setting process for FTA-directly funded projects.

Business Development Program

Ref: 49 CFR Part 26.35

SPC has not established a specific business development program linked to its contracting opportunities as a sub-recipient of PennDOT FHWA and FTA Unified Planning Work Program (UPWP) funds or as a sub-recipient or direct recipient of FTA Urban Area funds. SPC will re-evaluate the need for such a program every three years, coinciding with the three-year goal-setting process for FTA-directly funded projects.

Monitoring and Enforcement Mechanisms

Ref: 49 CFR Part 26.37

SPC has developed DBE Contractor and Subcontractor Monitoring and Enforcement Procedures (See Attachment E) to ensure the work committed to DBEs at contract execution, or subsequently through contract amendments, is actually being performed by the DBE and that the DBE is being paid for their work in a timely manner. SPC’s policy statement, these procedures, and the balance of SPC’s DBE Program supports our commitment to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT–assisted contracts.

- SPC will bring to the attention of the Pennsylvania Department of Transportation (PennDOT) any false, fraudulent, or dishonest conduct in connection with the DBE program, so that PennDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, or action under the suspension and debarment or Program Fraud and Civil Penalties rules) provided in Sec. 26.107.
- SPC will consider similar action under its own legal authorities, including responsibility determinations for future contracts.
- When the Prime Contractor is a DBE, it must demonstrate that it is responsible for the materials and supplies used on the contract, for negotiating pricing, determining quality and

quantity, ordering material, and installing (where applicable) and paying for the material itself. Determinations relative to whether the DBE has actually met its burden, so to speak, require the recipient to evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid is commensurate with the work the firm is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors. Moreover, a DBE does not perform a commercially useful function if it appears to be an extra participant in a transaction; and is presumed not to be doing so if the DBE firm's own work force is responsible for less than 30% of the total cost of its subcontract with the prime contractor. (See 49 CFR 26.55[c]).

- DBE utilization is monitored closely for all prime contractor contracts by the SPC Finance Director and her/his staff as well as the SPC Project Manager that has been assigned to the contract.
- SPC utilizes an invoicing template for all prime contractor contracts that includes a DBE utilization report (see Attachment E) that requires the prime contractor to report and sign off on the DBE amount included in each invoice. The prime contractor must certify the DBE amount for the invoice, the DBE amount invoiced to date, the DBE amount paid to date, and the DBE amount remaining with regards to the total DBE amount that was set for the contract. SPC maintains a running tally of the reported DBE amounts for work committed to DBEs at the time of contract award or subsequently through contract amendments.
- SPC reviews the contractor's invoice back-up for subcontractor payment documentation to confirm that the DBE utilization reports accurately reflect the payment amounts that the DBE received for work successfully completed under the contract. SPC also uses this invoice back-up to confirm that the DBE subcontractor payments were received from the prime contractor within 30 days that the payment was received by the prime contractor from SPC.
- The SPC Project Manager performs on-site or virtual visits as needed to ensure that work committed to DBEs at contract award or subsequently through contract amendments is actually being performed by the DBEs. The SPC Project Manager will certify that the DBE firm(s) that are utilized for the contract are performing a commercially useful function. The SPC Project Manager will examine similar transactions, particularly those in which DBEs do not participate, to determine whether the DBE utilization is commercially useful.

Fostering Small Business Participation

Ref: 49 CFR Part 26.39

SPC has incorporated the following non-discriminatory and race-neutral element to its DBE program in order to facilitate competition on USDOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses).

Identifying Small Business Sub-Contracts on Large Procurements

SPC's existing competitive procurement processes for large procurements (in excess of \$250,000) offers various opportunities to encourage and promote small business participation. SPC averages about 5 of these large contract offerings in a normal business year. SPC has begun to formalize and document these opportunities. The following methods are being used:

- Large procurements require detailed scope of work analysis prior to bid/qualification solicitation. As a matter of course, such analysis will include the general specification of project scope elements that may represent opportunities for small business participation.
- All competitive proposals require the completion of a cost and price analysis review prior to release of the request for proposal or bid. These analyses offer an opportunity to identify elements of the total project that could be “called out” in a request for proposal of bid document as small business opportunities.
- All competitive proposals and bids received in response to large contract procurement requests are evaluated according to evaluation factors and their relative importance. These are specified in the solicitation, although numerical or percentage ratings or weights are not necessarily disclosed for all procurements. When establishing rating factors and their weights, SPC will begin to include small business participation as a factor for large contracts. This process will be similar to the process currently in place that seeks to identify DBE participation opportunities in some procurements. For procurements with no DBE participation specified, this process will be particularly emphasized.
- Final contract awards for large contracts consider factors that are most advantageous to the project. Evaluation factors for a specific procurement reflect the subject matter and the elements that are most important to the project. SPC will begin to account for the advantages of small business participation in various contract elements as this portion of the DBE program is implemented.

In order to implement this additional element of its DBE program going forward, SPC will begin as part of the initial bid or qualification solicitation processes for large contracts, to provide appropriate assistance to potential prime contractors in the identification of small business participation opportunities. Such assistance would consist of sharing information on related firms from SPC’s bidders list and/or directing potential bidders to public information concerning small business development within the region.

Assessments of Contract Size/Creating Alternative Acquisition Strategies

SPC initiates, on average, about 5 large (in excess of \$250,000) contracts per year. This makes the strategy of identifying small business opportunities through sub-contracts as part of large procurements only partially effective in terms of an over-all program.

SPC determines the number of and project amounts for ongoing contracting opportunities as a component of its annual budgeting processes. On an ongoing basis, SPC also examines existing micro-purchases (\$10,000 or less) and small-purchases (\$10,001 to \$250,000) procurements in order to find lower costs and more responsive contractors.

Cost and price analyses are required for all procurements greater than \$10,000. SPC will continue to utilize these methods to determine, on a contract-by-contract basis, the appropriate size of micro and small contracts for the procurement of goods and services.

Currently, SPC requires a cost and price analysis to accompany all purchase order requests for procurements greater than \$10,000. During the normal review of these requests, SPC determines that

the price is fair and reasonable and that the description of the proposed procurement adequately documents the rationale for the given cost proposal. Also, information on the proposed contractor is included. This information is normally reviewed and compared to any additional information available concerning alternative contractors. This is the natural stage of the procurement process to explore potential small business participation.

SPC requires informal price and/or rate quotes from a minimum of three qualified bidders. SPC also requires that information on these bidders be somewhat comprehensive – either the bidder’s information is already contained in SPC’s bidders list, or this information is collected and retained prior to bid. Information contained in the request for purchase is normally reviewed and compared to any additional information available concerning alternative contractors. This is the natural stage of the procurement process to explore potential small business participation.

Going forward, SPC will incorporate an increased emphasis on sizing contracts to encourage small business participation in its ongoing contracting opportunities. SPC will continue to use its existing cost and price analysis tools; processes for qualifying bidders; increased research on small business development in the region; and enhanced communications with small business developers to increase the emphasis of sizing and structuring micro and small contracting opportunities in order to make more contracts viable for small business to bid on.

Exploring Small Business Development Opportunities with Regional Partners

Currently, SPC has established relationships with two important regional entities that specialize in small business development activities. These relationships are a product of both proximity and partnership in ongoing regional economic development activities. These partnerships are part of SPC’s regional planning efforts resulting from the long-range land-use and economic development strategies developed as part of SPC’s regulatory responsibilities as the region’s Metropolitan Planning Organization.

SPC will continue to enhance existing relationships with the Small Business Development Centers at the University of Pittsburgh and Duquesne University to identify and support the development of small business opportunities to participate in SPC’s USDOT-assisted contracts.

University of Pittsburgh – SBDC
Office of Sponsored Programs
123 University Place
B21 University Club Pittsburgh,
PA 15213
www.business.pitt.edu/entrepreneur/sbdc

AND

Duquesne Small Business Development Center
Rockwell Hall, Room 108
600 Forbes Avenue
Pittsburgh, PA 15282
www.sbdc.duq.edu/

Definition of Small Business

For this program, SPC will define “Small Business” utilizing the small business size standards developed by the U.S. Small Business Administration and promulgated at 13 CFR, Part 121.201 Small Business Size Regulations – Table of Small Business Size Standards Matched to North American Industry Classification System Codes.

SPC relies on the certification/verification processes used by the Pennsylvania Unified Certification Program (PAUCP) to confirm eligibility consistent with small business criteria consistent with those of 49 CFR Part 26. The purpose of the PAUCP is to provide “one-stop shopping” for firms seeking certification as a Disadvantaged Business Enterprise (DBE) in accordance with 49 CFR Part 26. A certified DBE is presumed eligible to participate in a small business program developed to comply with 49 CFR Part 26.39. The PAUCP makes certification decisions on behalf of various agencies and organizations in the Commonwealth with respect to participation in the DBE and ACDBE Programs. SPC will utilize the current PAUCP online directory as the listing of certified DBE Firms.

Implementation

This small business provision will be an active part of SPC’s DBE program, but will not act as a substitute for other critical elements of this DBE program, including use of contract goals (as appropriate), good faith efforts, and outreach activities.

SPC will continue to incorporate small business participation elements into the structure of its contracting opportunity documents, specific contract language and procurement processes.

Subpart C -- Goals, Good Faith Efforts, and Counting

Set-Asides or Quotas

Ref: 49 CFR Part 26.43

SPC does not use quotas in any way in the administration of its DBE program.

Overall Goals

Ref: 49 CFR Part 26.45

(A) Per the MASTER AGREEMENT with the Commonwealth of Pennsylvania Department of Transportation (PennDOT), SPC is required to follow PennDOT's current FHWA/FTA DBE Methodology and Goal Program. A description of the specific methodology used to calculate the overall goals and goal calculations can be found in Attachment F of this Program document. This section of the program will be updated each time PennDOT is required to submit a new goal statement.

(B) For SPC's FTA direct recipient funding, a new goal statement will be submitted every three years for FTA direct funded projects. SPC's current FTA direct recipient DBE Policy and Goal program is included in this document.

Before establishing the FTA direct funded overall goal each year (or every three years as applicable), SPC will review its current contract status; conduct research on current conditions; and, communicate with regional minority, women's and general contractor groups, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and efforts to establish a level playing field for the participation of DBEs. Information received from these consultations will be kept on file and that information will be utilized in development of the annual goals.

Following this analysis, SPC will publish a notice of the proposed fiscal year (or three-year as applicable) DBE goals, informing the public that the proposed goals and rationale are available for inspection during normal business hours at its principal office for 30 days following the date of the notice and informing the public that SPC and FTA will accept comments on the goals for 45 days from the date of the notice. SPC will notify the public via a posting on its website:

<https://www.spcregion.org/about/doing-business-with-spc/>.

SPC's required goal submissions to FTA will include a summary of information and comments received during this public participation process and its responses.

SPC will submit its DBE goal and goal-setting methodology to FTA by August 1st at three-year intervals based on a schedule determined by FTA. SPC may adjust its three-year goal during the three-year period to which it applies in order to reflect changed circumstances. SPC will submit such adjustment to FTA for review and approval. FTA may direct SPC to undertake a review of its goal to ensure that the goal continues to fit the circumstances appropriately.

SPC will begin using its FTA-directly funded projects goals on October 1st of each year, unless it has received other instructions from FTA. If a goal is established on a project basis, SPC will begin using the goal amount by the time of the first solicitation for a FTA- assisted contract for the project.

Goal Setting and Accountability

Ref: 49 CFR Part 26.47

If the awards and commitments shown on SPC's Uniform Report of Awards or Commitments and Payments Form at the end of any fiscal year are less than the overall goal applicable to that fiscal year, SPC will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and,
3. Submit the plan to FTA within 90 days of the end of the affected fiscal year that will establish and implement a corrective action plan. SPC will also maintain records regarding the analysis and efforts made.

Transit Vehicle Manufacturers Goals

Ref: 49 CFR Part 26.49

SPC will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, SPC may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Breakout of Estimated Race-Neutral & Race-Conscious Participation

Ref: 49 CFR Part 26.51[a-c]

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment F to this program. This section will be updated annually or according to the three-year cycle required by FTA.

Contract Goals

Ref: 49 CFR Part 26.51[d-g]

SPC will establish contract goals in order to meet any portion of its overall goals not projected to be met by race-neutral means. The following provisions will apply to SPC's use of contract goals:

- Contract goals will be used only on those USDOT-assisted contracts that have subcontracting opportunities.
- Contract goals will not be set on every USDOT-assisted contract.
- Contract goals will not be set at the same percentage level as SPC's overall goal, depending on the type of work to be performed and the availability of DBE's.
- Contract goals will provide for participation by all certified DBE's.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount of the participation of each DBE firm participating;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and,
- If the contract goal is not met, evidence of good faith efforts will be required.

Good Faith Efforts Procedures

Ref: 49 CFR Part 26.53

Demonstration of Good Faith Efforts

The obligation of any bidder/offeror is to make good faith efforts to meet specified DBE goals. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts.

SPC will ensure that all information is complete and accurate and adequately documents the bidder's/offeror's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

Information to be Submitted

SPC treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE firm will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
3. The dollar amount of the participation of each DBE firm participating;
4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; and
5. Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
6. If the contract goal is not met, evidence of good faith efforts (see Attachment G of this document). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract.

Administrative Reconsideration

SPC has established detailed good faith effort administrative procedures. These procedures are

listed in Attachment G to this program.

Good Faith Efforts when a DBE is replaced on a contract

SPC has established detailed good faith effort administrative procedures. These procedures are listed in Attachment G to this program.

Counting DBE Participation

Ref: 49 CFR Part 26.55

SPC will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55.

Subpart D - Certification Standards

Certification Process

Ref: 49 CFR Part 26.61-26.73

SPC will use the certification standards of Subpart D of 49 CFR Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards.

For information about the certification process or to apply for certification, firms should review the Pennsylvania Unified Certification Program (PAUCP) details at:

<https://www.penndot.pa.gov/about-us/EqualEmployment/Pages/UnitedCertificationProgram.aspx>

Subpart E -- Certification Procedures

Unified Certification Programs and Procedures

Ref: 49 CFR Part 26.81 – 26.91

The PAUCP makes all certification decisions on behalf of all agencies and organizations in the Commonwealth with respect to participation in the DBE and Programs. In other words, firms certified as a DBE with the PAUCP are eligible to participate on Federal Highway Administration (FHWA) and the Federal Transit Administration (FTA) funded contract as a Disadvantaged Business Enterprise.

Subpart F -- Compliance and Enforcement

Information, Confidentiality and Cooperation

Ref: 49 CFR Part 26.109

SPC will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with Federal, Commonwealth, and Local law.

Notwithstanding any contrary provisions of Commonwealth or local law, SPC will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.

Monitoring Payments to DBE's

SPC will require prime contractors to maintain records and documents of payments to DBE's for three years following the performance of the contract. These records are to be made available for inspection upon request by any authorized representative of SPC or USDOT. This reporting requirement extends to any certified DBE subcontractor.

SPC will perform annual audits of contract payments to DBEs. The audit will encompass the review of payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors agrees to the dollar amounts stated in the schedule of DBE participation.

ATTACHMENT A:

SPC PROCEDURES FOR DBE RECORD KEEPING, REPORTING, AND PARTICIPATION DETERMINATION

Record Keeping

SPC maintains the information necessary to report DBE participation in USDOT-assisted contracts by building and maintaining the FTA Award/Commitment and Expenditure table.

The SPC Finance Manager updates the table at the time an action is taken on an USDOT-assisted contract (execution of a contract or subsequent modification), by entering the FTA Project, Percent Federally Funded, Contractor Name, Begin and End Date of Contract, Contract Amount and Annual Commitment Amount, and Federal Portion of Commitment.

The DBELO (or her/his designee) who is responsible for DBE Reporting, updates the table semi-annually, by the 15th of May and November, by running the MIP Report “Posted General ledger Transactions – GL Monthly Transactions – DBE Reporting” and adding Actual Expenditures for the reporting period and DBE Expenditures for the period, then calculating the Federal Portion of the expenditures.

Note: Financial transactions (expenditures the time of payment) are recorded in SPC’s financial system. At the time of payment entry, a designation flag is affixed to the payment record showing DBE participation and the amount of payment to the DBE is recorded based on the vendor’s invoice

Completion of the Semi-Annual Uniform Report of DBE Awards or Commitments and Payments

The DBELO (or her/his designee) will access the FTA Award/Commitment and Expenditure table (saved in the shared “Grants and Contracts\FTA Reporting” folder on SPC’s “K:\” drive and use the data for the reporting period to complete [the Semi-Annual Uniform Report of DBE as follows:](#)

The DBELO (or her/his designee) will log-in to TrAMS (<https://faces.fta.dot.gov/suite/sites/trams-recipients/page/welcome>), click on the “records” tab and select the “Disadvantaged Business Enterprise (DBE) Reports” page. From the DBE page she/he will select the appropriate Semi-Annual report for completion based on the report due date. Once on the report page, click on the “Complete DBE Report” box in the top right-hand corner of the screen – this will enable data entry into the report screen. Complete all required fields in accordance with report instructions (found at <https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/instructions-completing-uniform-report-dbe-awards-or>) and click on either “Save” (to come back to the report later before submitting) or “Submit to FTA” to submit the report.

Determining DBE Attainment and Need for Shortfall Analysis

Annually, at the completion of the December 1st Semi-Annual DBE Report and no later than December 5th, the DBELO (or her/his designee) will calculate the percent of DBE participation during the Federal Fiscal Year to determine if SPC has met its annual DBE goal. This calculation is performed by dividing the DBE Commitment for the year by the Overall Contractual Commitment for the year (figures included in the submitted Semi-Annual DBE Reports). If the resulting percentage is greater than SPC’s goal, no shortfall analysis is needed. If the SPC goal is not met, a shortfall analysis must be conducted, no later than December 29th following instructions found at [Preparing an Adequate Shortfall Analysis and Corrective Action Plan | FTA \(dot.gov\)](#) and the analysis and corrective action plan must be maintained in SPC files for review by FTA upon request or during period oversight review (i.e., Triennial Review).

**ATTACHMENT B:
SPC BIDDERS LIST DATA FORM**

SPC BIDDERS LIST DATA FORM

SPC is required per 49 CFR Part 26.11 (c) to create and maintain a comprehensive Bidders List. This Bidders List Data Form will be used to collect bidder information used to determine the relative availability of Disadvantaged Business Enterprise (DBE) and non-DBEs, and will assist with establishing the agency's annual DBE goal. Each Bidders List is a compilation of bidders, proposers, quoters, subcontractors, and suppliers of materials and services who have submitted bids during the advertising period of a solicitation for services. **Please provide the following information. All fields must be completed.**

Part A: Business Data

1	Business Name:	<input style="width: 95%;" type="text"/>				
2	Business Address:	Street 1:	<input style="width: 95%;" type="text"/>			
		Street 2:	<input style="width: 95%;" type="text"/>			
		Street 3:	<input style="width: 95%;" type="text"/>			
		City:	<input style="width: 30%;" type="text"/>	State:	<input style="width: 10%;" type="text"/>	
		Zip:	<input style="width: 15%;" type="text"/>			
3	County in Which Business is Located:	<input style="width: 95%;" type="text"/>				
4	Name of Contact Person:	<input style="width: 95%;" type="text"/>				
5	Phone:	<input style="width: 30%;" type="text"/>	6	Fax:	<input style="width: 30%;" type="text"/>	
7	Email Address:	<input style="width: 95%;" type="text"/>				
8	Is this business certified as a DBE under the PA Unified Certification Program?		<input type="checkbox"/>	Yes	<input type="checkbox"/>	No
9	Business Annual Gross Receipts:		10			Age of Business:
	<input type="checkbox"/>	< \$500,000	<input type="checkbox"/>	\$2,000,000 to \$5,000,000	<input type="checkbox"/>	Years
	<input type="checkbox"/>	\$500,000 to \$1,000,000	<input type="checkbox"/>	> \$5,000,000	<input type="checkbox"/>	Months
	<input type="checkbox"/>	\$1,000,000 to \$2,000,000				

Part B: Project and Work Description

11	Project Name:	<input style="width: 90%;" type="text"/>				
12	Provide a brief description of the scope of work, services, and/or materials to be performed or furnished:					
<input style="width: 95%; height: 55px;" type="text"/>						
13	Provide the NAICS code that best defines your business:		<input style="width: 95%;" type="text"/>			
14	Will you subcontract any of your work?		<input type="checkbox"/>	Yes*	<input type="checkbox"/>	No
*(If "Yes", then the subcontractor(s) must also complete an individual SPC Bidders List Data Form.)						

Part C: Signature

The undersigned hereby declares that the information set forth on this page is current, complete and accurate.

Signature:	<input style="width: 95%;" type="text"/>	Date:	<input style="width: 95%;" type="text"/>
------------	------------------------------------------	-------	------------------------------------------

**ATTACHMENT C:
SPC ORGANIZATIONAL CHART**



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Organizational Chart

SOUTHWESTERN PENNSYLVANIA COMMISSION

**ATTACHMENT D:
SPC PURCHASE ORDER FORM**

Southwestern Pennsylvania Corporation

Purchase Order Request Form

All fields must be completed.

Requested by: _____ Date: _____ Date Required: _____

Item/Service Requested: _____ Quantity: _____ Estimated Total Cost: _____

Purpose:

Vendor Name: Vendor Address:

Excluded Party: Yes No SAM/EPLS Search document attached Yes No www.sam.gov

Payment Method: SPC Creditcard Vendor Invoice Send Check Staff Reimbursement

Projects to be charged:

Project	Project	Project
Project Number: _____	Project Number: _____	Project Number: _____
Exp Category: _____	Exp Category: _____	Exp Category: _____
Amount: _____	Amount: _____	Amount: _____
Budget (Finance department use only)	Budget (Finance department use only)	Budget (Finance department use only)
Project Number: _____	Project Number: _____	Project Number: _____
Exp Category: _____	Exp Category: _____	Exp Category: _____
Exp Category Amt: _____	Exp Category Amt: _____	Exp Category Amt: _____
Exp Category Balance: _____	Exp Category Balance: _____	Exp Category Balance: _____

Procurement Method: [refer to SPC Competitive Procurement Process - August 2021 and in accordance with OMB Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards (Uniform Guidance 2 CFR Part 200.317...326)].

- Micro-Purchase Threshold: ≤ \$10,000
- Small-Purchase Threshold: Goods \$10,001 - \$250,000 (3 informal written price quotes required)
- Small-Purchase Threshold: Services \$10,001 - \$250,000 (5 informal written price quotes required)
- Competitive Proposals (RFP/RFQ): >\$250,000 or if otherwise warranted (requires formal bidding)
- Sole Source: > \$10,000 (Sole Source Fact Sheet and Checklist Form must be attached)
- Sub-Award / Pass Thru Funds: Any Amount (Attach relevant documentation)

DBE Participation? Yes No (If Yes, attach search documentation from <https://paucp.dbesystem.com/>)

Competitive Cost Price Analysis: (attach worksheet) Yes No Independent Cost Estimate (ICE): (attach worksheet) Yes No

Approval Signatures:

Requestor: _____ Date: _____ Project Director: _____ Date: _____
 Project Manager: _____ Date: _____ Finance Director: _____ Date: _____
 Finance Manager: _____ Date: _____ Deputy Executive Director: _____ Date: _____

Comments:

Finance department use only.

Vendor: _____ Vendor Number: _____

Purchase Order Number: _____ Date: _____ Excluded Party documentation attached? Yes No

Southwestern Pennsylvania Corporation

Fair and Reasonable Price Determination

All fields must be completed for micro-purchases.

All micro-purchases must include documentation that the price that is being paid has been determined to be fair and reasonable.

The price has been determined to be fair and reasonable based on the following (check one or more):

- Cost reasonable based on recent purchase.
- Obtained from current price list.
- Obtained from current catalog.
- Commercial market sales price from ads/internet.
- Similar to it in related industry.
- Personal knowledge of product/service.
- Regulated rate (utilities).
- Contacted vendors (phone or email).
- Other: _____

Briefly describe the efforts taken to determine that the price is fair and reasonable:

I hereby certify that the price is fair and reasonable:

Requestor: _____ Date: _____

ATTACHMENT E:

DBE SUBCONTRACTOR MONITORING AND ENFORCEMENT PROCEDURES

In accordance with 49 CFR 26 and the SPC DBE Program and Policy Statement, SPC will strictly monitor and enforce that all committed DBE participation in subcontracts on US DOT-assisted/funded projects is performed by the DBE Subcontractor and paid promptly by the Prime Contractor. The following monitoring and enforcement procedures will be followed:

Establishing Contractor and Subcontractor Relationships

SPC will secure all goods and services in accordance with SPC's Procurement Policies and Procedures Manual. At the time of contract negotiation, the Prime Contractor will establish and commit to DBE participation either by their own workforce or through the subcontracting of work on the subject contract.

Establishing DBE Participation

When the Prime Contractor is a DBE firm, they will be required to demonstrate that the firm, and its own workforce, will be responsible for ordering, paying for and installing materials and supplies used, for negotiating pricing, and for determining quality and quantity. Determination as to whether the DBE firm has met its obligation requires the evaluation of the amount of work subcontracted, industry practices and whether the DBE firm is to be paid an amount commensurate with the work actually being performed by the DBE firm and the amount of DBE credit claimed.

A DBE firm is not performing a commercially useful function if it appears to be an extra participant as a Subcontractor; that is a DBE firm must be responsible for performing, managing, and supervising the services associated with their subcontract. The DBE firm is presumed not to be doing so if their own workforce is responsible for less than 30% of the total cost of its subcontract with the Prime Contractor. SPC will maintain documentation of this determination with the procurement record.

Establishing Commitment

A Prime Contractor's commitment to DBE participation by subcontractors is prescribed in the contractual agreement. The Prime Contractor is required to provide a description of the work to be performed by the DBE Subcontractor(s) and the amount of the total contract value to be committed to the subcontract. This commitment is the basis for determination of whether the DBE firm has been assigned, performed the prescribed services, and has been paid for the work committed to them by the Prime Contractor. In accordance with the executed contractual agreement, the Prime Contractor is required to provide SPC with a copy of the subcontract agreement, and subsequent amendments where applicable, which document the minimum work and pay commitment to the DBE firm.

Monitoring and Enforcement

DBE Utilization Monitoring

DBE utilization is monitored in two ways:

1. The SPC Project Manager will conduct virtual and in-person site visits as needed, but not less frequently than annually, with the Prime Contractor and/or DBE Subcontractor to verify the work actually being performed by the DBE firm. These visits can be conducted in conjunction with performance progress reviews. The type of work being performed by the DBE firm will determine the evidence needed to confirm the legitimacy of the DBE utilization committed and reported.
 - a. The SPC Project Manager will certify that the DBE firm(s) that are being utilized for the contractual agreement are performing a commercially useful function, as described above and referenced in 49 CFR 26, by examining similar transactions, particularly those in which DBEs do not participate, to determine whether the DBE utilization is commercially useful and consistent with normal industry practice. The SPC Project Manager will include a note as to whether the DBE firm performs similar services on non-federally assisted contracts.
 - b. The SPC Project Manager will prepare a report of the site visit documenting their findings, to include the items (work or documentation) examined and the outcomes, and will certify the accuracy of the DBE utilization reported to SPC. The site visit report will be made part of the procurement records.
2. The SPC Finance Manager (or her/his designee) will reconcile the Prime Contractor's DBE Utilization Report (a required element of SPC's Contractor Invoice template (Attached)) with the invoice back-up documentation.
 - a. Copies of subcontractor invoices and proof of invoice payment issued to the subcontractor is required back-up documentation for Prime Contractor invoices.
 - b. Page 2 of the SPC Contractor Invoice template is a DBE Utilization Report to be completed by the Prime Contractor with each invoice submission. The Prime Contractor will provide the name of the subcontractor, original agreement DBE value and total value, the DBE dollars paid this period, invoiced to date, paid to date and current projected value. The Prime Contractor will sign the DBE Utilization Report thereby certifying the accuracy of the report. SPC will maintain a running tally of DBE participation vs. commitment at the bottom of each invoice submission by recording subcontractor invoices billed and paid. The running tally will track participation via invoice number and date for transparency and consistency.
 - c. Page 3 of the SPC Contractor Invoice template is a Progress Report which also includes the requirement for the Prime Contractor to report whether DBE firms are conducting the work committed to DBE firms in the contract and whether the Prime Contractor's DBE goal will be met.

Prompt Payment Monitoring

As described in the SPC DBE Program Manual, “Prompt Payment Mechanisms” (Page 9) and “Compliance and Enforcement” (page 20), SPC will, on a semi-annual basis, conduct an audit of subcontractor prompt payment by requesting and reviewing from subcontractors’ copies of invoices submitted to and payments received from the Prime Contractor to validate participation and ensure prompt payment of DBE invoices.

Enforcement and Sanctions for Violations

Enforcement of contractual agreement terms and conditions regarding DBE participation is as follows:

1. DBE Utilization - Should SPC monitoring indicate that work committed to a DBE at contractual agreement execution is not being performed by the DBE firm, the following steps will be taken:
 - a. The SPC Project Manager and/or the SPC Finance Manager or SPC Finance Director will apprise the SPC DBELO of the discovery.
 - b. The SPC Project Manager will contact the Prime Contractor to gather details on the circumstances and cause for the lack of DBE participation.
 - c. The SPC DBELO, the SPC Project Manager, the SPC Finance Manager, and the SPC Finance Director will meet to review and determine whether the lack of DBE participation is within the Prime Contractor’s control.
 - d. If circumstances prohibit the intended engagement with the DBE firm, documentation of the situation and resolution will be made part of the procurement records. Whenever possible, the SPC Project Manager will work with the Prime Contractor to identify and engage with another DBE firm.
 - e. If it is determined that the Prime Contractor is intentionally not engaging or subcontracting with the DBE firm when a commitment has been made, SPC will:
 - 1) Terminate the contract for misconduct.
 - 2) Remove the Prime Contractor from consideration of future contracts for a period of one year.
 - 3) Report the misconduct to the Pennsylvania Department of Transportation for referral to the Department of Justice and US Department of Transportation Inspector General.
2. Prompt Payment – Should SPC monitoring reveal that work conducted by a DBE firm is not paid timely, in accordance with SPC’s prompt payment language sited above, SPC will impose the following sanctions:
 - a. First time offense - a 10% retainer on future Prime Contractor invoices until such a time that evidence is presented showing the subcontractor has been made whole for the remaining life of the prime contract.
 - b. Second offense, or evidence of intentionally withholding subcontractor payment, SPC will:
 - 1) Retain 10% of the Prime Contractor’s portion of the contract value until the contract has been completed.

- 2) Remove the Prime Contractor from consideration of future contracts for a period of one year.
- 3) Report the misconduct to the Pennsylvania Department of Transportation for referral to the Department of Justice and US Department of Transportation Inspector General.

Prime Contract Termination and Closeout

Prior to final payment and closeout of a contractual agreement with a Prime Contractor, SPC will review DBE utilization and payment records to ensure complete documentation of DBE goal attainment, DBE work performance, and payments. SPC will maintain a record of the Prime Contractor's inclusion of DBE participation for consideration in future engagements. Prime Contract documentation shall be maintained for the period of time required by the federal funding assistance agreement with which it was funded.

**Southwestern Pennsylvania Corporation
Contractor Billing Summary
Enter Contract Number / Title
Enter Prime Contractor Name**

Contractor's Name:	<u>PCCHECKLIST</u>	Submitted? Yes or No
Contract Number:	Progress Report(s)?	_____
Project Number:	Letter of Certification for the invoice?	_____
Invoice Number:	Payroll records/labor summary support invoice?	_____
Invoice Date:	Copies of invoices/receipts for other direct costs?	_____
Invoice Period:	Invoice segregated by budget line item?	_____

Contract Number	Budget Line Item	Budget Amount	Previously Invoiced	Current Invoice	Invoiced To Date	Balance Remaining
	Personnel					
	Fringe Benefits					
	Travel					
	Consumable Supplies					
	Other Direct Charges					
	Contract Services					
	TOTAL DIRECT CHARGES	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00
	Indirect Charges					
	SUBTOTAL					
	Local Share (Match)					
	TOTALS	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00

Contract Amount: **\$0.00** (not to exceed)
Paid to Date: \$0.00

I hereby certify that this invoice is true and correct.
Signature/Date: _____

Please attach appropriate (Invoices, spreadsheets, etc.) backup to support above costs.

PROGRESS REPORT NO. 1

Enter Contract Number / Title

Enter Prime Contractor Name

Enter Progress Report Period

A. PROGRESS SUMMARY OF SERVICES

1) Activities Performed Last Month

(list in bullet format separated by budget line item)

2) Activities to be Performed Next Month

(list in bullet format separated by budget line item)

-Is the work being performed by the contractor and subconsultants done in accordance with established quality control practices and procedures?

_____ YES

_____ NO (Explain)

-Are there any quality issues that needs to be addressed by the contractor or subconsultant?

_____ YES (Identify and Explain each)

_____ NO

B. ADHERENCE TO SCHEDULE

-Are all tasks to be completed on time?

_____ YES

_____ NO (Explain variances for each applicable budget line item)

C. EXPENDITURES (ACTUAL vs. BUDGET)

-Are tasks being completed within budget?

_____ YES

_____ NO (Explain variances for each applicable budget line item)

D. GRANT AMENDMENTS

-Do you anticipate any amendments needed to complete the work?

_____ YES (Explain for each applicable budget line item)

_____ NO

E. DBE PARTICIPATION

-The contractor has verified that all DBE subconsultants have quality practices in place and staff assigned to project has been trained.

_____ YES

_____ NO (Explain)

-Are all DBE firms identified in the DBE plan performing work intended and will the planned DBE % be met?

_____ YES

_____ NO (Explain variances for each applicable budget line item)

Signature/Date

**ATTACHMENT F:
GOALS AND GOAL-SETTING METHODOLOGIES**

PennDOT pass-through FHWA & FTA funds:

In accordance with its agreement with the Pennsylvania Department of Transportation (PennDOT) for carrying out transportation planning activities, SPC will defer to PennDOT's triennial DBE goal setting methodology when determining its goals for participation of DBE's in contracts awarded utilizing Federal Aid Highway and Federal Aid Transit funds authorized where contracting opportunities exist.

SPC will meet the maximum feasible portion of its overall goal by using race-neutral means, as described in 49 CFR Part 26.51.

SPC will establish contract goals in order to meet any portion of its overall goal not projected to be met by race-neutral means. The following provisions will apply to SPC's use of contract goals:

- Contract goals will be used only on those USDOT-assisted contracts that have subcontracting opportunities.
- Contract goals will not be set on every USDOT-assisted contract.
- Contract goals will not be set at the same percentage level as SPC's overall goal, depending on type of work to be performed and the availability of DBE's.
- Contract goals will provide for participation by all certified DBE's.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information:

- The names and addresses of DBE firms that will participate in the contract;
- A description of the work that each DBE will perform;
- The dollar amount of the participation of each DBE firm participating;
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and,
- If the contract goal is not met, evidence of good faith efforts will be required.

DBE Commitment Form

Lead Firm Name: _____

This is an interactive form. Please fill it out completely and review your entries carefully. After completing the form, save it to your computer, and include it with your Technical Proposal submission as described in the RFP.

DBE Commitment: The lead firm must state the level of DBE utilization that the firm is committed to achieve under the contract (based on the completed DBE Good Faith Effort Plan Form).

To meet the requirements of the U.S. Department of Transportation Regulation 49 CFR 26, all lead firms will provide evidence of the methods they have used to meet the Disadvantaged Business Enterprise / Joint Venture goals as published in the SPC Disadvantaged Business Enterprise Plan and approved by the Pennsylvania Department of Transportation.

Lead firms must make good faith efforts, as defined in 49 CFR 26, Regulations of the Office of the Secretary of Transportation, to subcontract a percent of the total project cost to small business concerns owned and controlled by socially and economically disadvantaged individuals (DBE). To be considered a DBE firm, DBE certification must have been granted through the Pennsylvania Unified Certification Program (www.paucp.com).

In the event that the lead firm for this solicitation qualifies as a DBE, the DBE component shall be deemed to have been met. Individuals who are presumed to be socially and economically disadvantaged include women, Blacks, Hispanics, Native Americans, Asian-pacific Americans, and Asian-Indian Americans. The apparent successful competitor will be required to submit information concerning the DBE firm(s) that will participate in this contract. The information will include the name and address of each DBE firm and a description of the work tasks to be performed by each named firm. If the lead firm fails to achieve the DBE utilization percentage stated herein, it will be required to provide documentation demonstrating that it made good faith efforts in attempting to do so. A Technical Proposal that fails to meet these requirements will be considered nonresponsive.

I (we) hereby certify that I (we) have complied with the above requirements for DBE participation under the contract and am (are) committing to a Disadvantaged Business Enterprise Utilization of _____* percent of the total project cost that is assigned to me (us) under this contract.

* The penalty for making false statements is prescribed in 18 U.S.C. 1001

Name of Proposed DBE Firm(s):			
Lead Firm Name:		IRS Number:	
Address:			
Affirmation: The name and title of the person that is duly authorized to contractually bind the firm must be entered below to affirm that the information contained on this form is complete and accurate at the time of submittal.			
Name & Job Title:		Date:	

ATTACHMENT G: GOOD FAITH EFFORTS REVIEW PROCESS

Background and Reference Documents:

SPC has entered into a contractual relationship with the Pennsylvania Department of Transportation (PennDOT) which mandates a percentage DBE participation in all its procurement activities relating to work as a recipient and sub-recipient of Federal Aid Highway funds and Federal Transit Administration funds authorized under Titles I, III, V and VI of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU) of 2005.

In cooperation with PennDOT and in accordance with the Federal DBE regulation set forth in 49 CFR Part 26, and as a sub-recipient of Federal funds received from PennDOT, SPC is required to establish a good faith efforts review process to evaluate the efforts of prospective successful bidders on all projects with DBE goals when the goal is NOT met. 49 CFR Part 26.53 requires that contracts carrying a DBE goal requirement be awarded to a bidder who makes a good faith effort to meet the contract goal. 49 CFR Part 26.53a states that a good faith effort is established by documentation that a bidder has obtained sufficient DBE participation to meet the prescribed contract goal or documentation that the bidder made an adequate good faith effort to meet the goal even though it did not succeed in this endeavor.

Each case ultimately turns on its own facts, and there is no one-size-fits-all checklist or formula for making good faith efforts determinations. Institutional guidance on good faith efforts determinations issued by USDOT's Office of General Counsel is set forth in 49 CFR Part 26.53 and Appendix A of 49 CFR Part 26. Appendix A, in particular, outlines factors to be used in a good faith effort analysis and is the best reference document available. Additional USDOT guidance is also included in the questions and answers that appear on the official DBE program website.

The Genesis of Good Faith Effort Review and Reconsideration

The good faith effort review process is triggered when a question arises as to whether or not the apparent successful bidder has documented a good faith effort. Where this occurs, a two-tiered good faith effort review process is in force and is used to resolve good faith effort issues that cannot be resolved by SPC officials tasked with reviewing documentation of the DBE participation.

Questions to be asked to determine if a good faith efforts review is needed:

- In any bidder response to a SPC RFP/RFQ, did the bidder meet all the requirements of the RFP/RFQ including DBE participation? If the apparent successful bidder has met or exceeded the stated goal, then NO review is needed, and the successful bidder can be recommended for approval.
- If the apparent successful bidder has NOT met the stated goal amount but has submitted

documentation supporting its good faith efforts, then a formal internal SPC good faith efforts review is needed before the apparent successful bidder can be recommended for approval. In this case, the following review procedures must be followed.

Good Faith Efforts Review Procedures:

Tier I: The Interdisciplinary Review Team (IRT) Recommendation

When an issue arises relative to the adequacy of a good faith effort submission and there is a request for a good faith effort review, SPC's Interdisciplinary Review Team (IRT), comprised of a subset of SPC senior management staff (the SPC Finance Director; the SPC Transportation Planning Director; the SPC Economic & Workforce Development Director; and the SPC Information & Data Director) will be tasked with reviewing the submitted documentation. The IRT is assigned the task of evaluating a bidder's good faith effort in accordance with the regulatory references delineated in these procedural guidelines as well as SPC's Competitive Procurement Guidelines. In the event that the IRT requires clarification of a document submitted by the bidder on the required submission date, it will be authorized to contact the bidder in writing via letter, or by e-mail, or by fax to obtain the requisite explanation. However, it is anticipated that communications between the bidder and the IRT will be infrequent.

Because good faith effort issues are time-sensitive, the IRT will be required to complete its review of the submitted documentation within seven (7) business days. Upon completion, the IRT will forward its findings to the SPC Executive Director for acceptance. If accepted, a memo indicating that the "good faith effort" put forth by the apparent successful bidder has been approved and a copy will be forwarded to the SPC DBE Liaison Officer to be included in the files.

In the event that the good faith effort review findings are NOT accepted, the second tier of SPC's Good Faith Efforts Review process will be initiated. 49 CFR Part 26.53[d] requires that SPC provide the apparent successful bidder with an opportunity for administrative reconsideration. As part of this reconsideration, bidder/offeree (bidder) can elect to provide written documentation or request a meeting before SPC's Good Faith Efforts Review Committee (Committee). 49 CFR Part 26.53[d](1) refers to this procedure as "reconsideration" and states that SPC's decision on reconsideration must be made by an official who did not take part in the original determination that the bidder failed to meet the goal or failed to make adequate good faith efforts to do so. Consistent with this provision, any member of IRT will not participate in the second-tier determination.

Tier II: Administrative Reconsideration - Good Faith Effort Review Committee (Committee)

Purpose: In the event that the good faith effort documentation submitted by a bidder is not accepted as to meeting the requirements of 49 CFR Part 26.53[a], the bidder will be afforded an opportunity for administrative reconsideration before SPC's Good Faith Effort Review Committee (Committee). The Committee will meet on an as-needed basis. As noted above, this body is independent of the IRT. The Committee will conduct inquiries of the following types of matters: (1) Review of the apparent successful bidder's DBE data and good faith effort to meet the DBE contract goal to determine whether to approve or disapprove the submission; (2)

Review of the bidder's good faith effort when a DBE firm fails to perform and the bidder's effort to replace the DBE results in a shortfall in the DBE goal: and, (3) Review of the bidder's DBE effort during the performance of the contract or at the completion of the contract and necessary sanctions for unwarranted shortfalls in the DBE contract goal.

Committee Composition: The Committee will be comprised of three (3) members. The SPC Executive Director will serve as Chairperson along with the SPC DBE Liaison Officer and the SPC Finance Director. Designated alternates will be available should a need arise. The Committee meetings are not subject to the Sunshine Law and are not open to the public. Attendance is limited to the impacted bidder, the Committee members, and legal counsel if needed. The SPC DBE Liaison Officer will prepare the background information that generated the appeal and will attend the hearing to clarify material contained in the source documentation provided to Committee members.

Good Faith Effort Review Documentation Package: A complete good faith effort review package will be provided to the Committee prior to the scheduled review meeting. The information will include the IRT information and findings. Each Committee member will evaluate the good faith effort submission in accordance with the established SPC guidelines, as well as the applicable regulatory guidelines for DBE good faith effort submissions. The evaluation will consider the record evidence as well as 49 CFR Part 26, Appendix A, Section 26.53.

Bidder Notification: Whenever a Committee meeting is intended to be convened, the impacted bidder will be notified, in writing, and invited to attend a meeting on a date certain. The bidder will be advised that the purpose of the meeting is to clarify documentation previously submitted to SPC within the time limits set forth in the bid documents and DBE Special Provisions. The bidder will not be required nor authorized to submit new good faith effort written documentation not in existence at the time of the DBE participation submissions consistent with 49 CFR Part 26 regulatory guidelines. The bidder will be expected to address questions posed by Committee members and will have the opportunity to clarify points resulting from questions asked or from review of its good faith effort submissions. The bidder will then be excused, and the Committee will deliberate in an executive session. The legal adviser will participate in the executive session to address regulatory questions.

At the conclusion of the Committee executive session and deliberation, the Committee will vote to accept or NOT accept the good faith effort submission. The decision will be determined by a simple majority vote. The majority must reach a consensus as to the reason for accepting or rejecting the bidder's good faith effort. The Committee's decision will be outlined in a letter sent to the bidder by first-class mail. The decision letter will be prepared by the legal adviser and will be signed by the Committee's Chairperson. Consistent with 49 CFR Part 26.53, the Committee's decision is not administratively appealable to USDOT and no further Department appeal will be available. All decisions of the Committee are final and binding.

Within 15 days of being informed by SPC that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/Offerors should make this request in writing to the following reconsideration official: Southwestern Pennsylvania Commission at 42 21st Street, Suite 101, Pittsburgh, PA 15222. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. SPC will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

SPC will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. SPC will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain SPC's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Disadvantaged Business Enterprise (DBE) Good Faith Effort Plan Form

This is an interactive form. Please fill it out completely and review your entries carefully. After completing the form, save it to your computer, and include it with your Technical Proposal submission as described in the RFP.

Lead Firm Name: _____

Street Address: _____

City: _____ State: _____ Zip Code: _____ Telephone: _____

E-mail Address: _____

Is your firm listed in the Pennsylvania Unified Certification Program Directory (www.paucp.com)?

No Yes (If yes, attach proof of PAUCP certification. Screen shot from PAUCP website is acceptable.)

If yes, what Class Type: DBE MBE WBE

Age of Firm (Number of Years in Business): _____ years

Annual Gross Receipts of the Firm:

_____ Less than \$500,000	_____ \$500,000 to \$1 million
_____ \$1 million to \$2 million	_____ \$2 million to \$5 million
_____ Over \$5 million	

1. List all firms you contacted with subcontracting/supply opportunities for this contract by choice of the lead firm, subcontractor, or supplier. Written notices to firms contacted by the lead firm for specific scopes of service identified for subcontracting/supply opportunities must be provided to subcontractor/supplier not less than fifteen (15) calendar days prior to Proposal Package due date.

The apparent successful lead firm for the contract must submit a Letter of Intent for all firms to be utilized on this contract to SPC within five business days from the date a contract is negotiated. ***If SPC does not receive completed copies from the apparent successful lead firm within five (5) business days from the date a contract is negotiated, then apparent successful lead firm's Good Faith Effort Plan will not be approved. An approved Good Faith Effort Plan is required prior to award of any contract.***

The following information is required for all firms that were contacted for subcontracting /supply opportunities:

Name & Address of Firm	Scope of Work to be Performed / Supplies to be Provided by Firm	NAICS Code(s) that Correspond to the Scope of Work to be Performed by Firm	Estimated Contract or % Level of Participation	If firm is DBE Certified, Provide Certification Number	Date Written Notice Was Sent and Method (Letter, Fax, E-mail)	Will Be Utilized As Part Of This Contract? (Yes/No)	If No, Reason Agreement Was Not Reached
1.							
2.							
3.							
4.							
5.							
6.							
7.							
8.							
9.							
10.							

(Use additional sheets as needed)

In order to verify the lead firm's Good Faith Effort Plan, it may be necessary to provide SPC with copies of the written notices to all firms contacted by the lead firm for specific scopes of services identified in relation to the subcontracting/supply opportunities in the above-named RFP. If requested by SPC, copies of said notices must be provided to SPC within five (5) business days of such request. Such notices must include information on the plans, specifications and scope of work. In addition, in Good Faith Effort situations where the lead firm received a quote from a DBE firm but does not utilize that firm because the lead firm received a lower quote from a non-DBE firm, the lead firm must provide copies of the quotes received for both the DBE and non-DBE firms.

2. List all DBE listings or directories, contractor associations, and/or any other associations utilized to solicit DBE subcontractors/suppliers.

3. Discuss efforts made to define additional elements of the work proposed to be performed by DBEs in order to increase the likelihood of achieving the goal.

4. Indicate advertisement mediums used for soliciting DBEs. Provide a copy of the advertisement(s).

5. Discuss efforts made to assist interested DBEs in obtaining bonding, letters of credit, or insurance.

6. Discuss efforts made to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

7. Name and phone number of person appointed to coordinate and administer the Federal DBE Good Faith Effort for your firm for this contract:

Name and Title: _____

Phone Number: _____

The Good Faith Effort Plan for Federally Funded Contracts must be approved by SPC prior to award of contract.

The DBE Good Faith Effort Plan is subject to review by SPC, and final approval in determining whether Good Faith Effort has been made rests with SPC.

Affirmation:

I HEREBY AFFIRM THAT THE ABOVE INFORMATION IS TRUE AND COMPLETE TO THE BEST OF MY KNOWLEDGE. I FURTHER UNDERSTAND AND AGREE THAT THIS DOCUMENT MUST BE ATTACHED THERETO AND BECOME A BINDING PART OF THE CONTRACT

NAME AND TITLE OF AUTHORIZED OFFICIAL:

Name & Title: _____

Date: _____

FOR SPC USE ONLY:

Plan Reviewed by: _____ Date: _____

Recommendation: Approval: _____ Denial: _____

Action Taken: Approval: _____ Denial: _____