

*Pinellas County  
Metropolitan Planning Organization*

# **Disadvantaged Business Enterprise Program**



# PINELLAS COUNTY MPO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

## Definitions of Terms

The terms used in this program have the meanings defined in 49 CFR 26.5.

## Objectives/Policy Statement (26.1, 26.3)

The Pinellas County Metropolitan Planning Organization (MPO) FTA recipient ID number 1038 has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the US Department of Transportation (DOT), 49 CFR Part 26. The MPO anticipates that it will receive Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the MPO has signed an assurance that it will comply with 49 CFR Part 26.

The policy of the Pinellas County MPO regarding DBEs, as defined in Part 26, includes the following:

1. To ensure equal opportunity to receive and participate in DOT-assisted contracts.
2. To ensure nondiscrimination in the award and administration of DOT assisted contracts;
3. To create a level playing field on which DBEs can compete fairly for DOT assisted contracts;
4. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
5. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
6. To help remove barriers to the participation of DBEs in DOT assisted contracts; and
7. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Once the policy statement is signed, the MPO will disseminate this policy statement to its Board and staff members within the organization, individuals on the MPO mailing list and it will be placed on the MPO website. The MPO will also distribute this statement to all DBE and non-DBE businesses that perform work for on DOT-assisted contracts, and to all DBE and non-DBE firms via advertisement and mailings to designated organizations.

  
\_\_\_\_\_  
Sarah Ward, Executive Director, Pinellas County MPO

Date 6/12/12

## **Section 26.7                      Nondiscrimination**

The MPO, recipient ID number 1038, 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.

In administering its DBE program, the MPO 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 DBE program with respect to individuals of a particular race, color, sex, or national origin.

## **Section 26.11                      Record Keeping Requirements**

### Uniform Report of DBE Awards or Commitments and Payments: 26.11(a)

MPO will report DBE participation to the relevant operating administration using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

### Bidders List: 26.11(c)

The MPO will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidder list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms. The MPO shall collect this information through the insertion of a contract clause requiring that prime bidders will report names/addresses, and other information, of all firms that submit quotes on subcontracts.

## **Section 26.13                      Federal Financial Assistance Agreement**

The MPO has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

### Assurance: 26.13(a)

*The MPO shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The MPO shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The MPO's DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the*

*MPO of its failure to carry out its approved program, the Department may impose sanction as provided for under 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.).*

This language will appear in financial assistance agreements with sub-recipients.

Contract Assurance: 26.13(b)

The MPO will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

*The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of 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 the recipient deems appropriate.*

**Section 26.21 DBE Program Updates**

The MPO will continue to carry out this program until all funds from DOT financial assistance have been expended. The MPO will provide to DOT updates representing significant changes in the program.

**Section 26.25 DBE Liaison Officer (DBELO)**

The MPO has designated the following individual as its DBE Liaison Officer:

Alicia Parinello  
310 Court Street  
Clearwater, FL 33756  
Phone: (727) 464-8200  
Email: [aparinello@pinellascounty.org](mailto:aparinello@pinellascounty.org)

The DBELO is responsible for implementing all aspects of the DBE program and ensuring that the MPO complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the MPO Executive Director, concerning DBE Program matters. The DBELO will be the sole staff member assigned to the DBE program. All DBE related correspondence should be directed to the attention of the DBELO. The DBELO will perform these responsibilities in addition to other grant management projects. An organization chart displaying the DBELO's position is found in Attachment B to this program.

The DBELO is responsible for developing and monitoring the DBE program, in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gather and report statistical and other information as required by DOT;
2. Review third party contracts and purchase requisitions for compliance with this program;
3. Work with all concerned to set overall annual goals;
4. Ensure that bid notices and requests for proposals are available to DBEs in a timely manner;
5. Identify contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitor results;
6. Analyze MPO's progress toward goal attainment and identify ways to improve progress;
7. Participate in pre-bid meetings;
8. Advise the CEO/governing body on DBE matters and achievement;
9. Participate with the legal counsel and project director to determine consultant compliance with good faith efforts;
10. Participate in DBE training seminars;
11. Verify that firms applying for a project are currently eligible as a DBE to do business with DOT;
12. Act as liaison to the Uniform Certification Process in Florida; and
13. Provide DBE related announcements to community organizations.

All correspondence intended for the DBELO should be directed to the Pinellas County MPO, Attention: Alicia Parinello, 310 Court Street, Clearwater, FL 33756; Phone: (727) 464-8200; Fax: (727) 464-8201; [aparinello@pinellascounty.org](mailto:aparinello@pinellascounty.org).

## **Section 26.27 DBE Financial Institutions**

It is the policy of the MPO 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 consultants on DOT-assisted contracts to make use of these institutions. These institutions can be identified in the U.S. Department of Treasury, Financial Management Services Division, Minority Bank Deposit Program. The availability of such institutions can be obtained at the U.S. Department of Treasury website: <http://www.fms.treas.gov/mbdp>.

The MPO re-evaluates the availability of DBE financial institutions every year. To date, no such institutions have been identified.

## **Section 26.29 Prompt Payment Mechanisms**

Prompt Payment: 26.29(a)

The MPO ensures that the following clause is placed in every DOT-assisted contract and subcontract:

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

Retainage: 26.29(b)

The MPO ensures that the following clause is placed in every DOT-assisted contract and subcontract:

*The prime consultant agrees to return retainage payments to each subconsultant within 30 days after the subconsultants work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the MPO. This clause applies to both DBE and non-DBE subconsultants.*

Monitoring and Enforcement: 26.29(d)

The MPO has established the following to monitor and enforce that prompt payment and return of retainage is in fact occurring:

1. Requiring prime contractors (in sub-contracts in excess of \$10,000), to provide subcontractors with all contract provisions, including the prompt payment provision. This will ensure that the subcontractors are knowledgeable of the prompt payment requirement.
2. Because the contract requires prompt payment by the prime contractor to the subcontractor, the subcontractor is entitled to prompt payment. Because subcontractors will be aware of this right, and it is in their greatest financial interest to assure that this right is respected, we believe it is reasonable to expect that subcontractors not receiving prompt payment will contact the MPO.
3. If the MPO is contacted by a subcontractor regarding possible violation of the prompt payment clause by the prime contractor we will make inquiries to the prime contractor.

Any delay or postponement of payment from the above referenced period may occur only for good cause following written approval from the MPO. This language applies to both DBE and non-DBE subcontracts. Failure to satisfy prompt payment to subcontractors no later than thirty (30) calendar days from the receipt of payment from

the MPO may constitute a breach of contract and may result in termination of the Contractor for default or such other remedy the MPO may deem appropriate.

### **Section 26.31                      Directory**

The MPO does not maintain its own list of DBEs. The MPO accepts firms that have indicated they will conduct business in Pinellas County listed in the DBE directory of Florida's Uniform Certification Program (UCP), maintained by the Florida Department of Transportation (FDOT).

The FDOT maintains a DBE Directory through its UCP. It is updated every 24 hours. The directory lists each firm's name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The Florida statewide DBE directory can be found at [www.dot.fl.gov](http://www.dot.fl.gov), under the Office of Civil Rights.

The directory does not subdivide firms into subspecialties, such as prime contractors for specific types of transportation projects and studies. It should, therefore, be assumed that the number of available firms, represented by the base number in 26.45, Step 1-B, will be higher than the actual number of ready and available firms appropriate for this MPO's projects.

The MPO defines appropriate specialties to include those listed below. Parentheses indicate North American Industry Classification System Code (NAICS).

- (54133) Consultants - Selected firms with transportation engineering, land acquisition, environmental consulting and engineering specialties
- (54182 & 54191) Public Relations and Marketing Services
- (54199) All Other Professional, Scientific and Technical Services
- (485991) Special Needs Transportation
- (485113) Bus and Other Motor Vehicle Transit Systems
- (48599) Other Transit and Ground Passenger Transportation
- (517212) Cellular and Other Wireless Telecommunications

Recipients of DOT assisted contracts in the State of Florida have engaged in establishing a statewide UCP agreement, which has potential for expanding the number of DBE listings for this geographic area. Information concerning UCP may be found online at the link below.

[http://www.dot.state.fl.us/equalopportunityoffice/New\\_Folder/Files/UCP%20MODIFIED%20APPLICATION.pdf](http://www.dot.state.fl.us/equalopportunityoffice/New_Folder/Files/UCP%20MODIFIED%20APPLICATION.pdf)

Upon request, the MPO will reproduce and mail copies of the form, or interested parties may phone the FDOT Equal Opportunity Office at (850) 414-4747.

The MPO supports the UCP directory through including invitation to bidders on the MPO

website, newspaper advertisements, and direct distribution to professional associations and organizations that work with individuals who may be eligible for DBE status. In advertisements, the MPO instructs potential DBE firms to download the appropriate forms from the Internet at FDOT's website. The MPO also offers to send the same form via US Mail. The name, address and phone number of the MPO is provided in MPO advertisements. When an applicant receives a form from the MPO – via US Mail or email – they are instructed to return the completed form directly to the FDOT.

### **Section 26.33 Overconcentration**

The MPO has not identified that overconcentration exists in the types of work that DBEs perform and will re-evaluate for overconcentration every year. The MPO conducts a review every year of the scopes of work being awarded to DBE subcontractors to ensure that DBEs are not over-utilized in specific areas to the exclusion of non-DBE firms. Should a determination of overconcentration be made, the MPO would consider using technical assistance, incentives, and other appropriate measures designed to assist DBEs in performing work outside of the specific field of over concentration. The MPO may also consider varying the use of contract goals in accordance with Section 26.51 and other measures to ensure that non-DBEs are not prevented from competing for subcontracts.

### **Section 26.35 Business Development Programs**

The MPO has not established a business development program. The MPO will re-evaluate the need for such a program every year. If the MPO establishes a program, it will be guided by the applicable Appendix of 49 CFR Part 26 and approved by FTA before being implemented.

### **Section 26.37 Monitoring and Enforcement Mechanisms**

The MPO will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The MPO will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. The MPO also will consider similar action under its own legal authorities, including responsibility determinations in future contracts. Attachment C lists the regulation, provisions, and contract remedies available to the MPO in the event of non-compliance with a DBE regulation by a participant involved in procurement activities.
3. The MPO will also provide a monitoring and enforcement mechanism to verify work committed to DBEs through contract award is actually performed by the DBEs. This will be accomplished by requiring the consultant or subgrantee to



provide DBE payment information with each invoice submitted to the MPO for payment. Failure of the consultant or subgrantee to provide DBE payment information and documentation may result in the invoice not being paid until the information has been provided.

4. The MPO will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

### Sanctions for Non-Compliance

In the event of the consultant's or subgrantee's non-compliance with FDOT's policy or failure to meet the prescribed DBE goal or expectancy set forth in this contract, or to establish a good faith effort to do so, contract sanctions may be enforced as deemed appropriate by the MPO and/or the FTA. These sanctions could include one or more of the following:

1. Withholding of payments to the consultant under the contract until the consultant or subgrantee complies;
2. Cancellation, termination or suspension of the contract in whole or in part; and
3. Suspension or debarment of consultant or subgrantee from eligibility to contract with the MPO in the future or to receive bid packages or request for proposal (RFP) packages.

### **Section 26.39                      Small Business Element**

The MPO has incorporated this nondiscriminatory element in its DBE program in order to facilitate participation by small businesses concerns in MPO projects. Under this element of the DBE program, the MPO will consider all actions and will avoid unnecessary and unjustified bundling of contract requirements that preclude small business participation in procurements as contractors.

Small Business Administration defines a small business concern as one that is independently owned and operated, is organized for profit, and is not dominant in its field of operation, as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b). "Bundling of contract requirements" means consolidating two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small-business concern due to the following:

1. Diversity, size, or specialized nature of the elements of the performance specified;
2. Aggregate dollar value of the anticipated award;
3. Geographical dispersion of the contract performance sites; or
4. Any combination of the factors described above.

On prime contracts not having DBE contract goals, the MPO will require the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform. In addition, the MPO will ensure that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

The MPO will accomplish its DBE contract goals by doing the following:

1. Helping small businesses to better understand the MPO's contracting and procurement opportunities;
2. Continuing to identify and utilize small business firms that provide goods and services purchased by the MPO;
3. Encouraging small businesses, including those owned by minority and women, to pursue relevant certifications including M/W, DBE and SCE certification; and
4. Hosting and participating in workshops, business development meetings and other events intended to enhance procurement opportunities for small businesses.

The MPO will implement the small business program within nine months of FTA approval of its DBE program. The MPO will verify business size through the DBE directory of Florida's UCP, maintained by FDOT.

The MPO will require prime contractors to identify small business subcontracts on large procurement as part of its small business element strategy.

### **Section 26.43                      Quotas**

The MPO does not use quotas in the administration of this DBE program.

### **Section 26.45                      Overall Goals**

In accordance with Section 26.45, the MPO will submit its triennial overall DBE goal to FTA on August 1 of the year specified by FTA.

The process generally used by the MPO to establish overall DBE goals is as follows:

1. The MPO determines a base figure for the relative availability of DBEs.
2. After calculating the base figure of relative availability of DBEs, evidence is examined to determine what adjustment is needed to the base figure in order to arrive at the overall goal.

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment D to this program. This section of the program will be updated every three years.

Before establishing the overall goal each year, the MPO will consult with minority, women's, and general consultant groups, as well as small business resource organizations to obtain information concerning the availability of disadvantaged and

non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the MPO's efforts to establish a level playing field for the participation of DBEs. The MPO has mailed announcements to the following:

- Resource Center for Women, 1301 Seminole Blvd., Suite 137, Plaza Center, Largo, FL 33770, phone 727-586-1110;
- Pinellas County Urban League, 333 31<sup>st</sup> Street N., St. Petersburg, FL 33713, phone 727-327-2081; and
- Tampa Bay Builders Association, 2918 West Kennedy Boulevard, Tampa, FL 33609, phone 813-873-1000.

Following this consultation, the MPO will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that the MPO and DOT will accept comments on the goals for 45 days from the date of the notice. The MPO posts notices in the Tampa Bay Times (formerly, the St. Petersburg Times), and on the Pinellas County website. There is no minority-focused newspaper that is widely circulated throughout the county. Normally, the MPO will issue this notice by June 1, 2013 and every three years thereafter. The notice will include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The MPO's overall goal submission to DOT will include: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

The MPO will begin using our overall goal on October 1 of the specified year, unless the MPO has received other instructions from DOT. If the MPO establishes a goal on a project basis, the MPO will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. The MPO's goal will remain effective for the duration of the three-year period established and approved by FTA.

#### **Section 26.47                      Goal Setting and Accountability**

If the awards and commitments shown on MPO's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, we 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.

#### **Section 26.51 (a-c)              Breakout of Estimated Race-Neutral & Race-Conscious Participation**

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment E to this program. When the DBE Goal is updated every three years, the breakout of estimated race-neutral and race-conscious participation (Attachment E) will be updated as well.

### **Section 26.51 (d-g)            Contract Goals**

The MPO will use contract goals to meet any portion of the overall DBE goal the MPO does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the MPO's overall DBE goal that is not projected to be met through the use of race-neutral means.

The MPO will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The size of contract goals will be adapted to the circumstances of each contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

The MPO will express its contract goals as a percentage of 2.12% of the Federal share of DOT assisted contracts.

### **Section 26.53                    Good Faith Efforts**

#### Award of Contracts with a DBE Contract Goal: 26.53(a)

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, MPO will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

#### Evaluation of Good Faith Efforts: 26.53(a) & (c)

The MPO's DBE Liaison Officer, shown below, is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

DBE Liaison Officer:  
Alicia Parinello  
310 Court Street  
Clearwater, FL 33756  
Phone: (727) 464-8200

The process used to determine whether good faith efforts have been made by a bidder

are as follows:

1. Whether the consultant attended any presolicitation or prebid meetings that were scheduled by the MPO to inform DBEs of consulting and subconsulting opportunities;
2. Whether the consultant or supplier provided notice in general circulation, trade association, and minority and female focus media concerning the subconsulting opportunities;
3. Whether the consultant provided written notice to a reasonable number of specific DBEs that their interest in the contract was solicited in sufficient time to allow the DBEs to effectively participate;
4. Whether the consultant followed up the initial solicitation of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
5. Whether the consultant selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goal including, where appropriate, segmenting contracts into economically feasible units to facilitate DBE participation;
6. Whether the consultant provided interested DBEs with adequate information about the plans, specifications and requirements of the contract;
7. Whether the consultant negotiated in "good faith" with interested DBEs and not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
8. Whether the consultant made efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance required by MPO or the consultant;
9. Whether the consultant effectively used the services of available minority and female community organizations, minority and female professional groups, local, state and federal minority and female business assistance offices, and other organizations that provide assistance in the recruitment and placement of DBEs.

The MPO may, upon written notice to the consultant, meet with its officials to discuss or provide written evidence of "good faith effort" to subcontract and negotiate with DBEs and joint ventures involving DBEs and its ability to achieve the established goal. Failure of a consultant to meet or provide the requested written information at a stipulated time and place, without a demonstration of good cause, shall be cause for rejection.

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

Information to be Submitted: 26.53(b)

The MPO 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 will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; (Attachment F)
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and (Attachment F)
6. If the contract goal is not met, evidence of good faith efforts.

#### Administrative Reconsideration: 26.53(d)

Within three days of being informed by the MPO 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: Sarah Ward, Interim Executive Director, Pinellas County MPO, 310 Court Street, Clearwater, FL 33756 phone 727.464.8200. 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 the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The MPO 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 cannot be administratively appealed to the Department of Transportation.

#### Good Faith Efforts when a DBE is Terminated/Replaced on a Contract with Contract Goals: 26.53(f)

The MPO requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without its prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation. Before transmitting to the MPO its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to the MPO prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise MPO of why it objects to the proposed termination.

In those instances where "good cause" exists to terminate a DBE's contract, the MPO will require the prime 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. The MPO 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, the MPO will require the prime contractor to obtain 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, the MPO 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.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the MPO to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 2.12 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment G), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required 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; (3) the dollar amount of the contract 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; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

**Section 26.55                      Counting DBE Participation**

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

**Section 26.81                      Unified Certification Programs**

The MPO is a non-certifying member of the Unified Certification Program (UCP) administered by:

Florida Department of Transportation  
Equal Employment Opportunity Office  
605 Suwannee Street, MS 65

Tallahassee, Florida 32399-0450  
Office: (850) 414-4747  
Fax: (850) 414-4878  
Website: [www.dot.state.fl.us/equalopportunityoffice/DBEProgram](http://www.dot.state.fl.us/equalopportunityoffice/DBEProgram)

The Florida UCP will meet all of the requirements of 49 CFR Part 26. The MPO will use and count for DBE credit only those DBE firms certified by the Florida UCP.

## **Section 26.89 Certification Appeals**

Any firm or complainant may appeal a Florida UCP's decision in a certification matter to DOT. Such appeals may be sent to:

U.S. Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
1200 New Jersey Ave. SE  
West Building, 7th Floor  
Washington, D.C. 20590

The MPO will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for its DOT-assisted contracts.

### Personal Net Worth

The MPO require all disadvantaged owners of applicants and of currently-certified DBEs to comply with their issuing authorities' Personal Worth requirement.

The personal net worth form and documentation used by FDOT may be found on the FDOT website online at the link below.

<http://www.dot.state.fl.us/equalopportunityoffice/New Folder/Files/UCP%20MODIFIED%20APPLICATION.pdf>

## **Section 26.109 Information, Confidentiality, Cooperation**

### Confidentiality

The MPO will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state and local law. The MPO will require all DBE firms to complete the *Release of Confidential Information* form that is a component of the FDOT's submission process (<http://www.dot.state.fl.us/equalopportunityoffice/New Folder/Files/UCP%20MODIFIED%20APPLICATION.pdf>).

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



submitter.

### Monitoring Payments to DBEs: 26.37

The MPO requires prime consultants to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the MPO or the DOT. This reporting requirement also extends to any certified DBE subconsultant.

The MPO keeps a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

The MPO shall perform interim audits of contract payments to DBEs. The audit will review payments to DBE subconsultants to ensure that the actual amount paid to DBE subconsultants equals or exceeds the dollar amounts stated in the schedule of DBE participation.

### Reporting to DOT

The MPO will report DBE participation as follows:

The MPO will report DBE participation on June 1 and December 1 using the “Uniform Report of DBE Awards or Commitments and Payments” form. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

### **Attachments List**

- A. DBE Advertisement
- B. MPO Organizational Chart
- C. Monitoring and Enforcement Mechanisms/Legal Remedies
- D. Overall Goal Calculation
- E. Breakout of race-neutral and race-conscious participation
- F. Form 1& 2 for Demonstration of Good Faith Efforts
- G. DBE Regulation, 49 CFR Part 26

## **Attachment A**

### **PUBLIC NOTICE CONCERNING THE PINELLAS COUNTY MPO DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

In accordance with requirements of the U.S. Department of Transportation as set forth in 49 C.F.R. Part 26, as amended, the Pinellas County Metropolitan Planning Organization (MPO) hereby notifies the public that it is recommending a Disadvantaged Business Enterprise (DBE) goal, whereby 2.12% of all applicable professional services and procurement contracts during Fiscal Years 2011-2013, beginning October 1, 2010 and ending September 31, 2013 involve DBE firms. The DBE Program is a Federal Program designed for business owners deemed socially and economically disadvantaged. Information pertaining to this goal and a description of how it was selected is available for inspection from 8:00 a.m. to 4:30 p.m. (Eastern Time) at the Pinellas County MPO, 600 Cleveland Street, Suite 750, Clearwater, FL 33755, for 30 days (through June 21, 2010) following the date of this notice. It is also available online at [www.pinellascounty.org/mpo](http://www.pinellascounty.org/mpo). Written comments on this goal will be accepted for 45 days) from the date of this notice. The comments are for informational purposes only and may be sent to the MPO's DBE Officer or to the Regional Civil Rights Officer, Federal Transit Administration, Region IV, 230 Peachtree Street NE, Suite 800, Atlanta, GA 30303.

*St. Petersburg Times, May 21, 2010*

#### **DBE Comment Period**

The MPO DBE document and public comment period notification was made available at the following:

MPO committee meetings:

#### **DBE Comment Period**

The MPO DBE document and public comment period notification was made available at the following:

MPO committee and public meetings:

- Pedestrian Transportation Advisory Committee, May 26, 2010 – 14 attended
- Technical Coordinating Committee, May 26, 2010 – 17 attended
- Pinellas Suncoast Transit Authority public meeting, June 16, 2010 – 14 attended

The MPO Lobby:

From May 21, 2009 through June 21, 2010

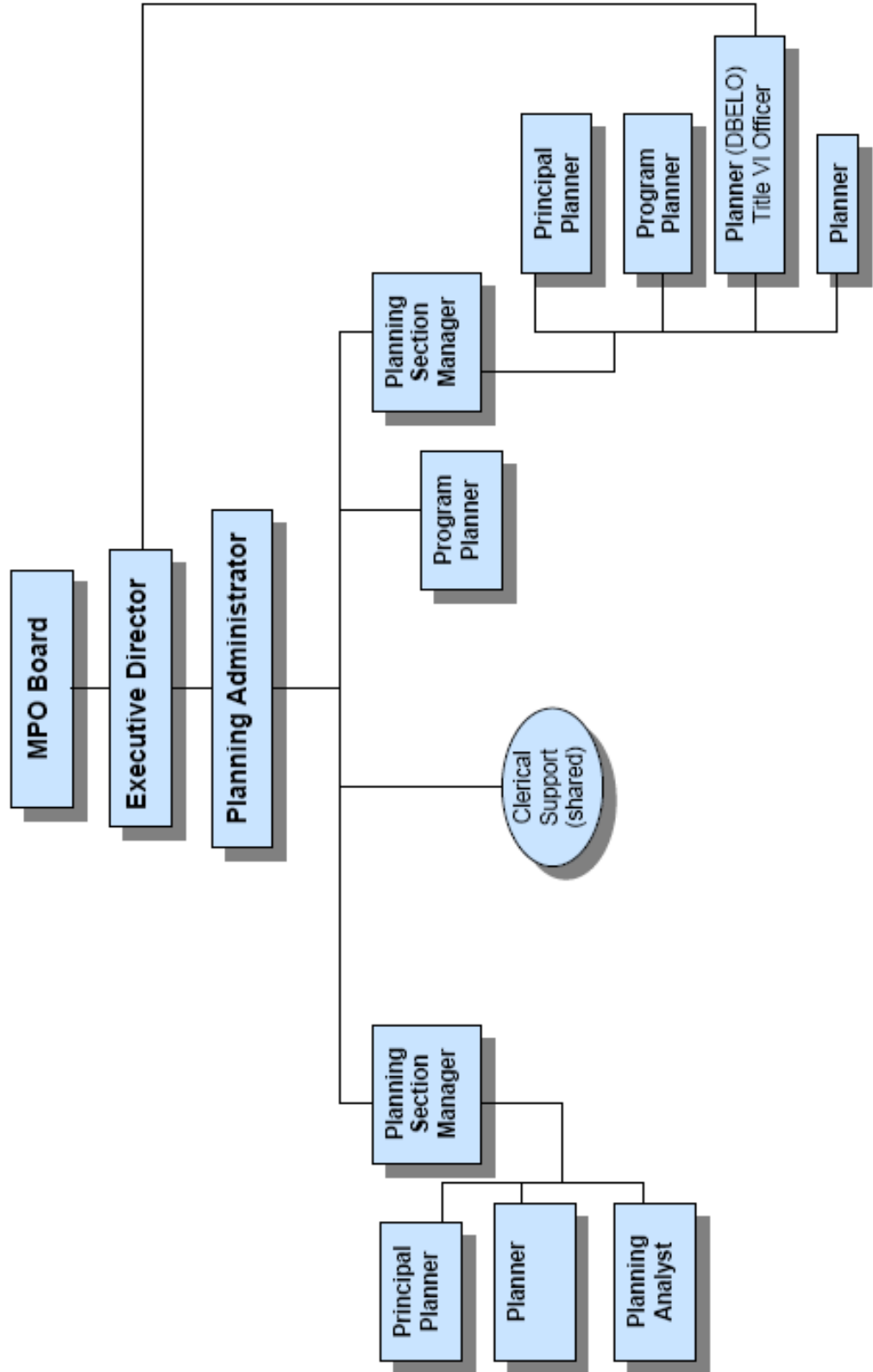
Bid opportunity notice and DBE information emailed to 111 potential bidders on June 11, 2010.

A legal advertisement was placed in the *St. Petersburg Times*, May 21, 2010.

Visit the MPO website at [www.pinellascounty.org/mpo](http://www.pinellascounty.org/mpo). The website also provides information on how to become a DBE.

**METROPOLITAN PLANNING ORGANIZATION  
PINELLAS COUNTY, FLORIDA February 8, 2013**

Staff Organizational Chart



## **Attachment C**

### Monitoring and Enforcement Mechanisms/Legal Remedies

The MPO has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract; and/or
2. FTA 49 CFR part 26.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26;
2. Enforcement action pursuant to 49 CFR part 31; and
3. Prosecution pursuant to 18 USC 1001.

## Attachment D

### Overall Goal Calculation

**Amount of Goal:** The MPO's overall goal for the following time period 2011-2013 is the following: 2.12% of the Federal financial assistance we will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

The process generally used by the MPO to establish overall DBE goals is described below:

**Methodology use to Calculate Overall Goal:** The MPO has a strong commitment to minority inclusion in all contracts. However, it is difficult to use standard formulas to arrive at a basis for MPO DBEs for these reasons:

1. Past experience on FTA awards has not provided adequate historical precedence for calculations.
2. MPOs in the Tampa Bay area do not have FTA DBE Programs and therefore cannot provide a historical basis for calculations.
3. The MPO's own needs are for transportation planning consultants only. Unlike transit organizations, the MPO does not build or purchase, lease or maintain equipment, terminals or garages. In addition, the MPO does not directly contract for staff to perform operations/ maintenance.
4. The MPO uses only a small number of transportation planning consulting firms each year for all contracts, including non-FTA assisted contracts.
5. The MPO's consulting needs are highly specialized. As a result, the pool of qualified consulting firms is limited. The transportation planning consulting firms that indicated they would conduct business in Pinellas County are not registered with the FDOT to conduct "major" (those over \$250,000) types of consultant work.
6. With the inclusion of the JARC/New Freedom projects, the MPO found that since the non-profit and local governmental subgrantees are not DBEs, it is difficult to include their operational and administrative expenditures toward the MPO's overall goal.

For the above reasons it is extremely difficult to obtain a clear idea of the number of qualified ready, willing and able DBEs from FDOT or transit agency lists, or to obtain an accurate idea of available firms from the US Census. (Census data does not breakdown firms by subspecialties.)

The MPO applies the assumptions listed below in defining the criteria for MPO DBEs.

- The MPO defines the term "Local Market Area" to include DBEs registered with the State of Florida.
- The MPO defines appropriate specialties to include the North American Industry Classification System Codes (NAICS) described in Section 26.31 Directory above.

**Step 1:** The MPO declares its Fiscal Years 2011-2013 goal of 2.12% for the DBE program. This figure is based on a denominator of 343 (287 "Engineering Services" firms, 5 Special Needs Transportation firms, 14 "Marketing Research & Public Opinion" firms", 25 "Other Professional, Scientific and Technical Services" firms, 3 "Bus and Other Motor Vehicle Transit Systems" firms, 6 "Other Transit and Ground Passenger Transportation" firms and 3 "Cellular and Other Wireless Telecommunications" firms drawn from the FDOT Bidders Lists). Of those firms, 29 DBEs have indicated that they will conduct business in Pinellas County. It should be noted that as a result of decreasing property tax revenues major statewide governmental budget reductions occurred since 2008. This has greatly impacted DBE contracting opportunities and many firms have not recertified or have opted out of the DBE program.

DBEs:

$$\frac{29 \text{ ready, willing and able DBEs}}{343 \text{ all firms from Local Market Area}} = 8.5 \%$$

Therefore, the MPO has determined its non-adjusted base figure to be approximately 8.5% (29/343).

The MPO does not consider the weighting process to be necessary.

**Step 2:** The MPO examined past DBE activity and future contracting opportunities and determined that an adjustment should be made. The following factors were considered in setting the MPO's goal at 2.12% for the 2011-2013 fiscal years:

The MPO reviewed its DBE activity for the past seven years and found that the highest goal was 6.8% attained in FY 2002/2003 and 1.03% was the average for the years the MPO had active contracts. The MPO then examined the current available grant funds and individual DBE contract goal balances. In FY 2010, the MPO had \$4,600,019 of FTA funds available in six grant contracts. Subgrantees and subconsultants had committed to contracting \$97,639 of those available funds to DBEs. Based on these figures, a 2.12% (\$97,639/\$4,600,019) DBE goal was established.

The MPO then examined future funding opportunities. The MPO anticipated additional JARC and New Freedom funding allocations. As the designated recipient for these grant programs, the MPO administers these funds on behalf of several eligible subgrantees. With the JARC and New Freedom funds, the DBE contracting opportunities are minimal considering most of the potential subrecipients will be non-profit agencies (which are not DBEs). These agencies use the funds primarily for personnel/operating expenses or vehicle purchases. Additionally, over the next several fiscal years the MPO will administer or pass through new grant funds to be used for consultant work, which is similar to the nature of non JARC/New Freedom work currently under contract, therefore DBE consulting opportunities will be similar. At this time, no additional Congressional Earmarks or grant awards are known.

Based upon this examination of current and similar future contracting opportunities, the MPO believes that a 2.12% goal is achievable.

## Attachment E

### Breakout of Estimated Race-Neutral and Race-Conscious Participation

Race neutral under the consultant or professional program would be defined as not assigning race or gender-specific goals on individual projects, but counting all participation of DBE subconsultants utilized by consultants on projects.

Examples of race-neutral means of facilitating DBE participation include:

- 1) Arranging solicitations, times for the presentation of bids, quantities, specifications and delivery schedules in ways that facilitate DBE and other small business participation.
- 2) Requiring consultants to subcontract portions of work that they might otherwise perform with their own staff or an outside consulting firm;
- 3) Providing the name, phone number and email address for additional information concerning a contract.

DBE participation during FY 2010 had been .71%. All of the MPO's general planning consultants have partnered with DBE qualified subconsultants. Of these firm's subconsultants, one was acquired through race neutral means and one through race conscious measures. Assuming this represents a reasonable expectation for the future, the MPO predicts that of the 2.12% overall DBE goal for the 2011-2013 fiscal years, approximately less than half (.05%) will be acquired from race-neutral participation and the remainder through race-conscious measures.

In order to ensure that the MPO's DBE Program will be narrowly tailored to overcome the effects of discrimination, if the MPO uses contract goals it will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

The MPO will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.



## **Attachment F**

### Forms 1 & 2 for Demonstration of Good Faith Efforts

*[Forms 1 and 2 should be provided as part of the solicitation documents.]*

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_\_\_ % DBE utilization on this contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of \_\_\_\_\_ %) is committed to a minimum of \_\_\_\_\_% DBE utilization on this contract and submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
(Signature) Title

**FORM 2: LETTER OF INTENT**

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

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The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By \_\_\_\_\_  
(Signature) (Title)

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.**  
(Submit this page for each DBE subcontractor.)

## **Attachment G**

### Regulations: 49 CFR Part 26

49 CFR Part 26 can be located via the internet using the following link:

[http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49tab\\_02.tpl](http://www.ecfr.gov/cgi-bin/text-idx?c=ecfr&tpl=/ecfrbrowse/Title49/49tab_02.tpl)