

**LAWRENCE TRANSIT
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
PLAN**

Updated December 10, 2020

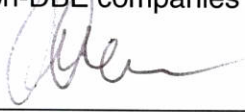
Objectives and Policy Statement (26.1, 26.23)

Lawrence Transit, a division of the City of Lawrence, Kansas, has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Lawrence Transit receives Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Lawrence Transit has signed an assurance that it will comply with the requirements of 49 CFR Part 26.

- It is the policy of Lawrence Transit to ensure that DBEs, as identified in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:
- To ensure nondiscrimination in the award and administration of DOT- assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT- assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT-assisted contracts; and
- To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The Transit and Parking Manager (TPM) has been designated as the DBE Liaison Officer (DBELO) for the Public Transit Division. In that capacity, the TPM 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 Lawrence Transit in its financial assistance agreements with the DOT.

Lawrence Transit will disseminate this signed policy statement to the Lawrence City Commission, appropriate City department heads, and is included in solicitations to DBE and non-DBE companies that perform work on our DOT-assisted contracts.



Craig S. Owens
City Manager – Chief Executive Officer
City of Lawrence, Kansas

Date 12/23/20



Adam Weigel
Transit and Parking Manager– DBE Liaison Officer

Date 12/11/2020

SUBPART A - GENERAL REQUIREMENTS

Section 26.3 Applicability

The City of Lawrence, KS – Lawrence Transit is the recipient of federal transit 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, II, and V of the TEAS-21, Pub. L. 105-178.

Lawrence Transit administers the DBE program in compliance with all laws, regulations, Executive Orders and guidance.

Section 26.5 Definitions

Lawrence Transit will adopt the definitions contained in 49 CFR Part 26 for this program. [Federal Register, Vol. 79, No. 191, Final Rule: October 2, 2014]

Section 26.7 Non-discrimination Requirements

Lawrence Transit 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, Lawrence Transit 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

Lawrence Transit will report DBE participation on a semi-annual basis using the Uniform Report of DBE Awards or Commitments and Payments. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

Lawrence Transit maintains a bidders list comprised of vendors who have provided quotes or bids on past opportunities, as well as those firms who have asked to be included on the list for future opportunities. Additionally, Lawrence Transit collects information about DBE and non-DBE firms that bid or quote on DOT-assisted contracts. New bidders/vendors are asked to complete the Lawrence Transit Vendor Information Request Form. A copy of the form can be found as Attachment A to this program.

The purpose of this requirement is to allow use of the bidder's list approach to calculating overall DBE goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

Section 26.13 Federal Financial Assistance Agreement

Lawrence Transit has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

Lawrence Transit 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. Lawrence Transit 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 recipient'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 Lawrence Transit of its failure to carry out its approved program, the Department may impose sanctions 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: 26.13b

Lawrence Transit 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, which may include, but is not limited to:

- Withholding monthly progress payments;
- Assessing sanctions;
- Liquidated damages; and/or
- Disqualifying the contractor from future bidding as non-responsible.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Lawrence Transit receives grant funding of \$250,000 or more in FTA planning, capital, and/or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

Section 26.25 DBE Liaison Officer (DBELO)

The Transit and Parking Manager (TPM) has been designated by the Lawrence City Commission as the DBE Liaison Officer. contact information is below:

Adam Weigel
Transit and Parking Manager
Lawrence Transit
P.O. Box 708
933 New Hampshire Street
Lawrence, KS 66044
785-832-3465
785-832-3462 Fax
aweigel@lawrenceks.us

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that Lawrence Transit complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to City Manager (CEO) concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found as Attachment B to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials. The DBELO has a staff of one (1) to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with other departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner by posting on the Lawrence Transit website.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral and contract specific goals).
6. Analyzes the progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the CEO/governing body on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Acts as liaison to the Uniform Certification Process in Kansas.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.

Section 26.27 DBE Financial Institutions

It is the policy of Lawrence Transit 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 DOT-assisted contracts to also make use of these institutions. During the goal-

setting process, Lawrence Transit utilizes the following resources to evaluate the availability of DBE financial institutions:

1. Federal Reserve list of Minority-Owned Businesses
(www.federalreserve.gov/releases/mob/current/default.htm)
2. Kansas Department of Transportation's list of Kansas Minority Owned Banks
(www.ksdot.org/divadmin/civilrights/pdf/KansasMinorityOwnedBanks.pdf)
3. KDOT's Directory of Disadvantaged Business Enterprises
(www.kdotapp2.ksdot.org/ContractorList/ContractorList.aspx)

To date, we have identified the following minority-owned institutions:

1. Liberty Bank and Trust Company (African-American)
1314 N. 5th
Kansas City, KS 66101
(913) 321-7200
2. CBW (African-America/Native-American)
109 East Main
Weir, KS 66781
(620) 396-8221

As of June 6, 2019, these minority-owned institutions are not certified as DBEs in the state of Kansas.

Section 26.29 Prompt Payment Mechanisms

Prompt Payment: 26.29(a)

Lawrence Transit will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than thirty (30) days from the receipt of each payment the prime contract receives from City. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (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 written approval of the Lawrence Transit. This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

Lawrence Transit will hold a 5% retainage on prime construction contracts, but does not hold retainage on contracts for professional services, rolling stock, or operations and management.

Prime contractors shall not be allowed to hold any retainage from any subcontractor, material supplier or other service provider without the prior written consent of Lawrence Transit. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Lawrence Transit. Prime contractor is required to return retainage to subcontractor within 30 days of receiving payment from recipient.

Notwithstanding any contrary agreement, when a subcontractor has performed in accordance with the provisions of its contract, a prime contractor shall pay to the subcontractor, and each subcontractor shall in turn pay to its subcontractors, the full or proportional amount received for each such subcontractor's work and material based on work completed or service provided under the subcontract, within 30 days after receipt of each progress or final payment or 30 days after receipt of the subcontractor's invoice, whichever is later.

Prompt Return of Retainage.

In regards to construction projects where retainage is withheld from subcontractors, the Contractor is required to return any retainage payment to those DBE and non-DBE subcontractors in accordance with the timing set forth in any applicable laws or within 30 days, whichever is less, from the date of receipt of the retainage payment from Lawrence Transit related to the subcontractor's work. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Lawrence Transit.

Lawrence Transit will include the following contract clause obligating prime contractors to make prompt and full payment of any retainage to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed:

The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may only occur for good cause following written approval of just cause by the Lawrence Transit. This clause applies to both DBE and non-DBE subcontracts.

This clause applies to both DBE and non-DBE subcontractors. Lawrence Transit requires all prime contractors to provide information on payments made subcontractors upon request and will perform random inspections of payments. Lawrence Transit DBE Prompt Payment clause, is included in the posting package on all federally funded projects, is reviewed at all pre-construction conferences, and is included in contractor compliance reviews.

Monitoring and Enforcement of Prompt Payment: 26.29(d)

Lawrence Transit may request copies of prime and subcontractor invoices to verify if the prompt payment has occurred, or may contact subcontractors directly to inquire about payment dates.

Section 26.31 Directory

The Kansas Statewide Certification Program, administered through the Kansas Department of Transportation's Office of Civil Rights, maintains an online directory of all certified DBEs in the

state of Kansas. Lawrence Transit utilizes this directory, which is updated on a regular basis as new firms become certified to participate as DBEs. The directory is available at the following:

Kansas Statewide Certification Program
Kansas Department of Transportation
Office of Civil Rights
700 SW Harrison, 3rd Floor West
Topeka, KS 66603-3754
Voice: (785) 296-5298
Fax: (785) 296-3490
Hearing Impaired: 711
www.ksdot.org

or, by following the link below:

<https://kdotapp.ksdot.org/dbcontractorlist/>

Section 26.33 Overconcentration

Lawrence Transit has not identified that overconcentration exists in any of the types of work DBEs typically perform. Our analysis compared certified DBEs against non-DBE companies performing work in the same categories in the marketplace. Lawrence Transit will perform an evaluation of overconcentration on a triennial basis during the DBE goal setting process. During this analysis Lawrence Transit will review only the relative categories in which work is being performed for LTS.

In the event Lawrence Transit determines overconcentration exists in future projected contracting opportunities, Lawrence Transit will devise appropriate measures to address the overconcentration, and will present these measures to the Federal Transit Administration (FTA) for their approval. Upon FTA approval, the measures will become part of Lawrence Transit's DBE program.

Section 26.35 Business Development Programs

At this time Lawrence Transit has not established a business development program. We will re-evaluate the need for such a program on a triennial basis during the DBE goal setting process. Lawrence Transit refers interested parties to the KU Small Business Development Center, the Lawrence Chamber of Commerce, and/or the Kansas Department of Commerce for assistance with business development activities.

Section 26.37 Monitoring and Enforcement Mechanisms

Lawrence Transit will include the following language in all DOT-assisted contracts:

The Contractor 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 this DOT-assisted contract. 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 Lawrence Transit deems appropriate. Each subcontract the Contractor signs with the subcontractor must include the assurance in this paragraph (see 49 CFR Part 26.13(b)).

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

1. We will bring to the attention of the DOT any false, fraudulent, or dishonest conduct in connection with the program, so that the DOT can take 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 Part 26.109.
2. Lawrence Transit will also consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. Lawrence Transit will require certification that work contracted with a DBE is actually performed by the DBE. We will follow up this certification by conducting on-site evaluations, as practical, to monitor the performance obligated in the contract.

In the event of non-compliance with the DBE regulation by any participant in our procurement activities, Lawrence Transit shall be entitled to pursue any and all remedies allowed by the laws of the State of Kansas and the Federal Government. Such remedies may include, but are not necessarily be limited to, the following:

- a. Civil action, in a court of appropriate jurisdiction, for breach of the contract. Such damages may be set forth in the contract as predetermined damages, consequential damages arising out of the breach and/or specific performance.
 - b. Criminal prosecution may result from the commission of fraud or other criminal activity on the part of a party to the contract. In the event that a crime is perceived to have occurred, Lawrence Transit may refer the case to the appropriate law enforcement or prosecutorial authority for further action. In such event Lawrence Transit anticipates cooperating with such agency in the investigation and prosecution of a criminal case.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Small Business Participation Plan

Lawrence Transit will take reasonable steps to ensure equal opportunity and non-discrimination in all of its procurement matters in accordance with state and federal laws. The intent is to promote inclusion and opportunity for small and disadvantaged businesses to participate in contracts and expenditures, while maintaining race and gender neutral measures in their operations.

Lawrence Transit has incorporated this non-discriminatory element into its DBE program, in order to facilitate competition on DOT-assisted projects by small business concerns (both DBE and non-DBE small businesses). Lawrence Transit will facilitate competition by small businesses, and will take the following steps to eliminate obstacles to the participation.

- Lawrence Transit, when feasible, will “unbundle” projects or separate large contracts into smaller contracts to make them more accessible to small businesses.
- Race-neutral small business set asides may be considered for contracts less than \$250,000.
- Lawrence Transit will refer contractors to the Small Business Administration’s table of Small Business Size Standards to determine eligibility of SBE.
- Prime contractors will be encouraged to subcontract portions of their work typically performed by their own forces when subcontractors submit a lower quote. It will be the bidder’s responsibility to ensure SBE is eligible, but Lawrence Transit will provide resource listings to assist with their determinations.
- Lawrence Transit will award contracts under \$3,000 solely to small businesses whenever there are small businesses available that meet the contract specifications.
- Lawrence Transit will work with the Chamber of Commerce, KU Small Business Development Center, and the Kansas Department of Commerce to provide information to SBE and DBE businesses on how to do business with Lawrence Transit and to notify them of upcoming solicitations and bids. Notice of solicitations and bids are posted on our web site.
- Lawrence Transit will research the availability of SBE and DBEs in the marketplace by utilizing our Bidder’s List, DBE’s certified in the State of Kansas, local directories, the Kansas Division of Small Minority/Women–Owned Business Directory, and any other resources found that identify or promote these types of businesses.

The Small Business Administration (SBA) defines a small business concern as one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period. Additional information on SBE requirements can be found at www.sba.gov.

Small businesses that are also owned by and controlled by socially disadvantaged individuals will be encouraged to seek DBE certification and will be referred to the Kansas Statewide Certification Program (KSCP). Only DBE certified firms will be counted towards DBE race-neutral participation.

To meet the small business element of our DBE Program, firms must meet the small business requirements established under the Small Business Administration’s (SBA) size standards as outlined in www.sba.gov. Eligible firms may complete and submit the Affirmation of Small Business Status (Attachment D) to participate in DOT-assisted contracts as a small business.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

Lawrence Transit does not use quotas or set-asides in the administration of this DBE portion of this program.

Section 26.45 Overall Goals

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

Lawrence Transit will also request the use of project-specific DBE goals as appropriate, and/or will establish project-specific goals as directed by FTA.

Before establishing the overall goal,, Lawrence Transit will consult with local business organizations, including small, minority, and woman-owned, as identified, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the transit system's efforts to establish a level playing field for the participation of DBEs.

DOT regulations have established a two-step process for developing an overall goal. Step 1 determines the Relative Availability of DBEs in the marketplace compared to the total number of all firms that provide the same service. Lawrence Transit is a partner with the Kansas Statewide Certification Program's (UCP) and utilizes the Kansas Department of Transportation Office of Civil Rights Directory of Disadvantaged Business Enterprises and Directory of Non-Construction DBEs to find certified DBEs in our marketplace. To obtain the total number of available companies within the identified marketplace, a combination of local phone directories, Census data, Bidder's list, Internet searches, and trade publications are used.

Step 2 examines evidence available in the marketplace to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal. Lawrence Transit inserts weights into the relative availability to establish a new base figure which is narrowly tailored to our agency and marketplace. As necessary, Lawrence Transit will factor past participation in determining its overall goal.

Prior to submission to FTA, Lawrence Transit will publish a notice of the proposed overall goal on its website, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Lawrence Transit Administrative Office. Addresses where comments can be sent will be included in the public notice.

The overall goal submission to DOT will include: the goal (including a breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology and worksheets used to develop the goal; a summary of information and comments received during this public participation process and our responses, if any; and proof of publication of the goal on our website.

Overall goals go into effect on October 1 of the specified year, unless otherwise directed by DOT. Goals established on a project basis, will begin by the time the first solicitation for a DOT-

assisted contract for the project. The goal will remain effective for the duration of the three-year period established and approved by FTA.

Section 26.47 Shortfall Analysis

If the awards and commitments shown on LTS'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
 - a. Shortfall percentage
 - b. Race-conscious / race-neutral breakdown
 - c. race-neutral measures
 - d. projects undertaken during FY
 - e. DBE participation on projects
 - f. Reasons for the shortfall
2. Establish specific steps and milestones to correct the problems identified in the analysis
 - a. Specific steps to achieve goal in upcoming fiscal year
 - b. Milestones for implementing these steps
3. Lawrence Transit will perform the analysis, establish and implement a corrective action plan, and maintain information/records regarding the analysis and efforts made for three years and make available to FTA upon request.

Section 26.49 Transit Vehicle Manufacturers Goals

Lawrence Transit will require each transit vehicle manufacturer (TVM), as a condition of being authorized to bid or propose on DOT-assisted transit vehicle purchases, to certify that it has complied with the requirements of this section. Alternatively, Lawrence Transit 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. Lawrence Transit will ensure that TVM purchase information will be submitted to FTA within 30 days of making an award.

Section 26.51 Meeting Overall Goals/Contract Goals

Lawrence Transit will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. These efforts may include, but are not limited to:

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing technical assistance and other services;
3. Carrying out information and communications plan on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small

- businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
4. Referring firms to the Kansas DBE Directory (Attachment C), through print; and electronic means, to the widest feasible universe of potential prime contractors.

Lawrence Transit will use contract goals to meet any portion of the overall goal it 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 our overall goal that is not projected to be met through the use of race-neutral means.

Contract goals for small business participation may be fulfilled by utilizing SBEs, DBEs, or a combination of both. Contractors are mandated to select all subcontractors in a non-discriminatory manner.

Lawrence Transit will express our contract goals as a percentage of the total amount of a DOT-assisted contract.

Section 26.53 Good Faith Efforts Procedures

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

The obligation of the bidder/proposer is to make good faith efforts to meet established goals and to ensure equal opportunity for SBEs and DBEs to participate on DOT-assisted contracts. Lawrence Transit 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 that it has made adequate good faith efforts to meet the DBE contract goal, even though it was unable to do so.

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

The DBELO is responsible for determining whether a bidder/proposer who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. DBELO will ensure that all information is complete, accurate, and adequately documents the bidder/proposer's good faith efforts before entering into contract. Form 1: Demonstration of Good Faith Efforts Disadvantaged Business Enterprise (DBE) Utilization Form (Attachment E), and Form 2: Demonstration of Good Faith Efforts Letter of Intent and Affirmation of DBE Firm (Attachment F) will be provided in all solicitations which contain a DBE contract goal for contractors to demonstrate of good faith efforts to obtain DBE participation. In addition, a DBE Participation Response Form (Attachment G) is provided for prime contractor to distribute to DBE firms contacted about inclusion on the contract.

Information to be Submitted: 26.53(b)

Lawrence Transit treats bidder/proposer's compliance with good faith efforts requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidder/proposer 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;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and

If the contract goal is not met, evidence of good faith efforts must be submitted by the contractor. 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; and

Lawrence Transit requires the bidder/offeror must present the information required by paragraph (b)(2) of this section –

- a) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or
- b) No later than 5 days after bid opening as a matter of responsibility.

Administrative Reconsideration: 26.53(d)

Within ten (10) days of being informed by the DBELO that it is not responsive because it has not documented sufficient good faith efforts, a bidder/proposer may request administrative reconsideration. Bidders/proposers should make this request in writing to the following reconsideration official: City of Lawrence, Director of Equity and Inclusion- Reconsideration Official, P.O. Box 708, Lawrence, KS, 66044, 785-832-3400, cityhall@lawrenceks.org. The reconsideration official will not have played any role in the original determination that the bidder/proposer did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/proposer 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/proposer 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. We will send the bidder/proposer 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)

Lawrence Transit requires prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without Lawrence Transit's prior written consent. This can be done by completing a Request for Modification, Replacement, or Termination of DBE Project Participation form (Attachment G). 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 Lawrence Transit 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 Lawrence Transit prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise Lawrence Transit of why it objects to the proposed termination. If the matter is one of public necessity (e.g., safety/security), the five (5) day period may be reduced.

In those instances where “good cause” exists to terminate a DBE’s contract, Lawrence Transit 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 the contract with another certified DBE, to the extent needed to meet the contract goal. Lawrence Transit will require the prime contractor to notify the DBELO immediately of the DBE’s inability or unwillingness to perform and provide reasonable documentation.

Lawrence Transit 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. We will require the prime contractor to notify the DBELO 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 our 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 Public Transit Administrator 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 Public transit Administrator 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 Lawrence Transit 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/offers, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/offers shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment _), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offers 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 participation of each DBE firm participating; (4) Written documentation of the bidder/offers’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

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

SUBPART D - CERTIFICATION STANDARDS

Sections 26.61-26.73 Certification Process

The certification standards of Subpart D of part 26 will be used to determine the eligibility of firms to participate as DBEs in DOT-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 contact:

Kansas Department of Transportation
Office of Civil Rights Compliance
Eisenhower State Office Building
700 SW Harrison Street, 3rd Floor West
Topeka, KS 66603-3745
Tel: (785) 296-7940
Fax: (785) 296-0723
Toll Free for DBE's 1-800-854-3613
Hearing Impaired: 711
Email: KDOT.CivilRights@ks.gov
Website: <https://www.ksdot.org/divadmin/civilrights/>

Or

Kansas Department of Commerce
Office of Minority & Women Business Development
1000 SW Jackson, Suite 100
Topeka, KS 66612-1354
Tel: (785) 296-5298
Fax: (785) 296-3490
Email: KDC_MWBD@ks.gov
Website: <https://www.kansascommerce.gov/programs-services/minority-women-business-development/>

Section 26.81 Unified Certification Program

Lawrence Transit is a partner in a Unified Certification Program (UCP) known as the Kansas Statewide Certification Program (KSCP) administered by the Kansas Department of Transportation Office of Civil Rights, and the Kansas Department of Commerce (KDOC) Office of Minority and Women Business Enterprises. Lawrence Transit relies on the UCP to perform all certification activities under these sections to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The UCP's certification decisions are based on the facts as a whole.

Lawrence Transit is not a certifying agency and it relies on the UCP for all DBE certification activities. The UCP will meet all of the requirements of this section. Lawrence Transit will only use for DBE credit, those firms certified as DBE by the Kansas Statewide Certification Program.

Section 26.83 Procedures for Certification Decisions

Lawrence Transit intends to rely on the UCP and does not intend to certify DBE firms.

Section 26.85 Denials of Initial Requests for Certification

Lawrence Transit intends to rely on the UCP and does not intend to certify DBE firms.

Section 26.87 Removal of a DBE's Eligibility

In the event Lawrence Transit proposes to remove a DBE's certification, Lawrence Transit will follow procedures consistent with 26.87. The UCP will be ultimately responsible for removing a DBE's certification.

Section 26.89 Certification Appeals

Any firm or complainant may appeal a Kansas Statewide Certification Program 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

SUBPART E - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Cooperation, and Confidentiality

Lawrence Transit will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

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

Monitoring Payments to DBEs

Lawrence Transit will require prime contractors 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 Lawrence Transit, City of Lawrence or DOT. This reporting requirement also extends to any certified DBE subcontractors.

Lawrence Transit will perform random audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation. Lawrence Transit will keep a running tally of actual payments made to DBE firms for work committed to them at the time of the contract award.

The contractor shall maintain records showing the name and address of each first-tier subcontractor. The records shall also show:

1. The name and business address, regardless of tier, of every DBE subcontractor, DBE vendor of materials or DBE provider of service;
2. The date of payment and the total dollar figure paid to each of the DBE firms;
3. The DBE prime contractor shall also show the date of work performed by their own workforce along with the corresponding dollar value of the work claimed towards the DBE goals; and
4. Upon completion of the contract, the contractor will provide a summary of the records stated above.

This DBE utilization information will be documented and the DBELO will compare the final amounts paid to the amount originally listed. These should be the same unless an authorized substitution was allowed, or the contractor used more DBEs and they were added. The contractor will be required to explain in writing why the names of the subcontractors, the work items, or the dollar figures differ from what was originally contracted.

Attachments

Attachment A - Lawrence Transit Vendor Information Request Form

Attachment B - Organizational Chart

Attachment C - Kansas DBE Directory

Attachment D - Affirmation of Small Business Status Form

Attachment E - Form 1: Demonstration of Good Faith Efforts Disadvantaged Business Enterprise (DBE) Utilization Form

Attachment F - Form 2: Demonstration of Good Faith Efforts Letter of Intent and Affirmation of DBE Firm

Attachment G - DBE Participation Response Form

Attachment H - Request for Modification, Replacement or Termination of Disadvantaged Business Enterprise (DBE) Project Participation

Attachment I - DBE Regulations: 49 CFR Part 26

Attachment A

LAWRENCE TRANSIT SYSTEM VENDOR INFORMATION REQUEST FORM

This form is to be completed by **all** vendors or bidders, regardless of DBE status, that bid or provide quotes on federally-assisted contracts pursuant to **49 CFR Part 26.11**.

Date: _____

Name of Firm: _____

Address of Firm: _____

Age of Firm: _____

Phone Number: _____ **Contact Name:** _____

Annual Gross Receipts Category

<\$500,000 _____
\$500,000 to \$1 million _____
\$1 million to \$2 million _____
\$2 million to \$5 million _____
>\$5 million _____

Summary of Services Provided _____

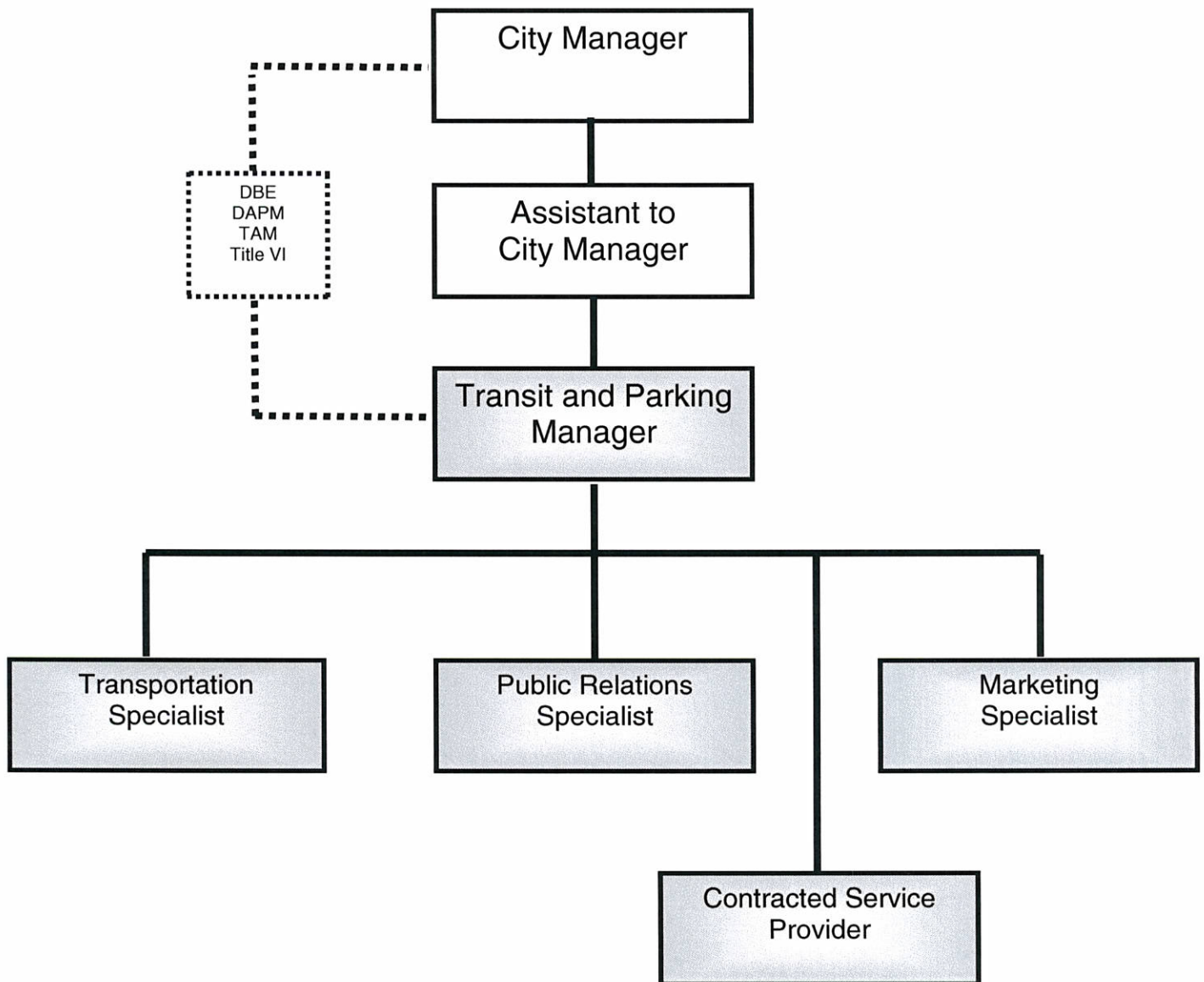
Certified DBE? _____

If yes, in which states are you certified? _____

Please return form by fax or mail to:

Lawrence Transit System
PO Box 708
Lawrence, KS 66044
(785) 832-3465
(785) 832-3462 Fax

Organizational Chart



Attachment C

For information on those firms currently certified as DBEs, KDOT's Directory of Disadvantaged Business Enterprises can be accessed through the following link:

<https://kdotapp.ksdot.org/dbecontractorlist/>

Attachment D

Affirmation Small Business Enterprise (SBE) Status

Name of small business: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax: _____

Description of work performed by SBE firm:

Affirmation

The above-named SBE firm certifies that it meets the definition of Small Business Enterprise as outlined by the Small Business Administration at www.sba.gov.

By: _____
(Signature) (Title)

Attachment E

Form 1: Demonstration of Good Faith Efforts Disadvantaged Business Enterprise (DBE) Utilization Form

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 the 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)

Attachment F

Form 2: Demonstration of Good Faith Efforts Letter of Intent and Affirmation of DBE Firm

Name of bidder/offeror's firm: _____

Address.: _____

City: _____ State: _____ Zip: _____

Description of work to be performed by DBE firm:

The estimated dollar value of this work is \$ _____

The bidder/offeror is committed to utilizing the following DBE firm for the work described above.

Name of DBE firm : _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____

Affirmation

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

By: _____
(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in the Letter of Intent and Affirmation shall be null and void.

(Must submit a separate page for each DBE subcontractor)

Attachment G

DBE Participation Response Form

Types of Service or Supplies:

Name of DBE firm : _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ Fax Number _____

E-mail: _____

_____ Our firm **will not** participate in this contract.

_____ Our firm **will** participate in this contract.

_____ Our firm would like to be notified of **future** contracts in the type of work described above.

Business Owner Name:

(Signature) (Date) (Print Name)

Please fax completed form by _____ with a copy of your DBE Certification to Adam Weigel at (785) 832-3462.

Attachment H

Request for Modification, Replacement or Termination of Disadvantaged Business Enterprise (DBE) Project Participation

This form must be submitted to request substitutions for a DBE listed in the Schedule of Participation by Contractor and Subcontractors form submitted as part of Contractor's Bid Documents as amended by any Change Orders or previously approved Request for Modifications/Substitution. This executed document shall be an amendment to the Contractor's DBE utilization plan.

Contractor : _____

Address: _____

Project Number and Name: _____

1. As the duly authorized representative of the above contractor, I am authorized to request this substitution or modification on behalf of the Contractor and hereby request that Lawrence Transit recommend or approve:

_____ **Substitution of DBE Firm**

Name of Current DBE Firm to be Removed: _____

Scope of Work:

Contract Amount \$ _____ Amount of Work Completed \$ _____

Name of Proposed DBE Firm _____

Scope of Work:

Amount of Proposed Work \$ _____ Date to Begin Work _____

Modification of Amount of Work by DBE Firm

Name of DBE Firm: _____

Current Contract Commitment _____% Change Commitment _____%

2. This substitution/modification is necessary because (check all the apply):

_____ The DBE Subcontractor failed or refuses to execute a written contract.

_____ The DBE Subcontractor failed or refuses to perform the work of its normal industry standards without good cause and that failure or refusal of the DBE is not a result of bad faith or discriminatory action of the contractor.

_____ The DBE Subcontractor failed or refuses to comply with reasonable, non-discriminatory bonding requirements.

_____ The DBE Subcontractor has become bankrupt, insolvent, or exhibits credit unworthiness (supporting documentation attached).

_____ The DBE Subcontractor has committed a material default or breach of contract.

_____ The DBE Subcontractor has voluntarily withdrawn from the project (DBE's written notice of withdraw is attached).

_____ The DBE owner has died or has become disabled and is unable to complete its work on this project.

_____ A Change Order and/or Amendment of the project was issued that modifies the amount the contractor is to be compensated and correspondingly impacts the amount of compensation due to the DBE subcontractor.

3. I affirm that written notice has been given to the DBE subcontractor of the Contractor's intent to request a substitution or modification (copy attached) and the DBE Subcontractor has been given five (5) business days to respond to the notice (a copy of DBE's response is attached).

EXCEPTION: If required in a particular case as a matter of public necessity (e.g., safety) the response period may be shortened.

4. The following is a narrative summary of Contractor's good faith efforts (as listed in Lawrence Transit's Bid Documents) exhausted in attempts to substitute the

DBE firm named above with other qualified, certified DBE firms for the listed scope of work or any other scope of work on the project. Supporting documentation is attached.

5. Contractor hereby affirms that it has not intentionally attempted to evade the requirements of the Contract or the DBE Program and it is in Lawrence Transit's best interest to approve the Request for Substitution or Modification. Additional documentation will be presented when requested by Lawrence Transit in order make it full determination.

Submitted By:

Approved By:

Contractor's Authorized Representative

Lawrence Transit Authorized Representative

Title

Title

Date

Date

Attachment I

For information on all DBE regulations in 49 CFR Part 26, please follow the link below:

<https://www.transit.dot.gov/regulations-and-guidance/civil-rights-ada/dbe-regulations>

Hard copies or electronic versions of the regulations will be available upon request by contacting:

Adam Weigel
Lawrence Transit System
P.O. Box 708
933 New Hampshire Street
Lawrence, KS 66044
785-832-3464
785-832-3462 Fax
aweigel@lawrenceks.org