

**BALTIMORE METROPOLITAN PLANNING ORGANIZATION**

**BALTIMORE REGIONAL TRANSPORTATION BOARD  
RESOLUTION #15-20**

**ADOPTING BY THE BALTIMORE REGIONAL TRANSPORTATION BOARD FOR THE BALTIMORE  
METROPOLITAN COUNCIL WHEN PURSUING CONTRACTS PURSUANT TO THE UNIFIED PLANNING WORK  
PROGRAM – A DISADVANTAGED BUSINESS ENTERPRISE PROGRAM AND POLICY**

**WHEREAS**, the Baltimore Regional Transportation Board is the designated Metropolitan Planning Organization for the Baltimore region, encompassing the Baltimore Urbanized Area, and includes official representatives of the cities of Annapolis and Baltimore, the counties of Anne Arundel, Baltimore, Carroll, Harford, and Howard, as well as representatives of the Maryland Department of Transportation, the Maryland Department of the Environment, the Maryland Department of Planning, and the Maryland Transit Administration; and

**WHEREAS**, the Baltimore Metropolitan Council, on behalf of the Baltimore Regional Transportation Board, has established a Disadvantaged Business Enterprise program in accordance with regulations of the U. S. Department of Transportation following 49 CFR Part 26. The Baltimore Metropolitan Council has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Baltimore Metropolitan Council has signed an assurance that it will comply with 49 CFR Part 26; and

**WHEREAS**, the Baltimore Regional Transportation Board will disseminate the Disadvantaged Business Enterprise policy statement to its members, will place on the Baltimore Metropolitan Council website, share at Minority Contractor Events, and by making it available in Baltimore Metropolitan Council's offices; and

**WHEREAS**, it is the policy of the Baltimore Regional Transportation Board to ensure that Disadvantaged Business Enterprises, as defined in part 26, have an equal opportunity to receive and participate in Department of Transportation-assisted contracts; and

**NOW, THEREFORE, BE IT RESOLVED** that the Baltimore Regional Transportation Board adopts the Disadvantaged Business Enterprise Program and Policy Statement (Attachment 1) as the process for use by the Baltimore Metropolitan Council when using federal funds to implement certain transportation activities in the Unified Planning Work program.

**I HEREBY CERTIFY** that the Baltimore Regional Transportation Board as the Metropolitan Planning Organization for the Baltimore region approved the aforementioned resolution at its January 27, 2015 meeting.

1-27-15

Date

A handwritten signature in black ink, appearing to read 'G. Cardwell', written over a horizontal line.

George G. Cardwell, Chairman  
Baltimore Regional Transportation Board

**BALTIMORE METROPOLITAN COUNCIL (BMC)  
BALTIMORE REGIONAL TRANSPORTATION BOARD (BRTB)  
DBE PROGRAM**

**Objectives/Policy Statement**


On behalf of the Baltimore Regional Transportation Board (BRTB), the Baltimore Metropolitan Council (BMC) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. BMC has received Federal financial assistance from DOT, and as a condition of receiving this assistance, BMC has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of BMC to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

The BMC has designated a DBE Liaison Officer. In that capacity, this person is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by BMC in its financial assistance agreements with the DOT.

BMC has disseminated this policy statement to the BMC Board, to the BRTB Board and through all departments of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts. Information is posted on the BMC website, shared at Minority Contractor Events and as part of all Requests for Proposals.

  
\_\_\_\_\_  
Michael B. Kelly  
Executive Director

\_\_\_\_\_  
3-10-15  
Date

## **GENERAL REQUIREMENTS**

### **Objectives**

The objectives are found in the policy statement on the first page of this program.

### **Applicability**

BMC is a sub-recipient of federal –aid highway and federal transit funds authorized under MAP-21, the Moving Ahead for Progress in the 21st Century Act (P.L. 112-141).

### **Definitions**

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

### **Non-discrimination**

BMC 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 this DBE Program, BMC 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.

### **Record Keeping Requirements**

The BMC will report DBE participation to DOT as follows:

We will report DBE participation to FTA on bi-annual basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

We will report DBE participation to FHWA on a quarterly basis, using DOT Form 4630.

### **Federal Financial Assistance Agreement**

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

#### Assurance:

BMC 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 BRTB takes all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts.

The BMC's DBE Program, as required by 49 CFR Part 26 and as submitted to 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 BMC 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

BMC ensures 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.

## **ADMINISTRATIVE REQUIREMENTS**

### **DBE Program Updates**

Since BMC has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year as well as FHWA authorized by the statute for which this part applies, 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.

### **Policy Statement**

The Policy Statement is elaborated on the first page of this program.

### **DBE Liaison Officer (DBELO)**

The Executive Director will appoint a DBE Liaison Officer. This appointment will be attached to this document and be considered part of the DBE Policy.

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the BMC complies with all provision of 49 CFR Part 26. The DBELO has direct,

independent access to the Executive Director concerning DBE program matters. The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. 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 the BRTB to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations.
6. Analyzes progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings, or the planning thereof.
8. Advises the BRTB on DBE matters and achievement.
9. Provides outreach to DBEs and community organizations to advise them of opportunities.

### **Prompt Payment Mechanisms**

BMC 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 30 days from the receipt of each payment the prime contract receives from the BMC. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the BMC. This clause applies to both DBE and non-DBE subcontracts.

### **Directory**

BMC provides a web link to the MDOT directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE.

### **Monitoring and Enforcement Mechanisms**

BMC 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 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. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by the BMC contract manager.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

## **GOALS AND GOOD FAITH EFFORTS**

### **Set-asides or Quotas**

BMC does not use quotas in any way in the administration of this DBE program.

### **Overall Goals**

A description of the methodology used by BRTB to calculate the overall goal and the goal calculations can be found in Attachment 1 to this program. This section of the program will be updated annually.

We will publish a notice of the proposed overall goals, informing the public of the proposed goal and its rationale based upon procedures outlined in the BRTB Public Involvement Plan.

Our overall goal submission to DOT will include a summary of comments received during this public participation process and the responses. We will begin using our overall goal on July 1 of each year, unless we have received other instructions from DOT.

### **Contract Goals**

BMC will use contract goals to meet any portion of the overall goal the BMC 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.

We will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

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

## **Good Faith Efforts Procedures**

### Demonstration of good faith efforts

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

The DBELO and the BMC contract manager are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsible.

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

### Information to be submitted

The BMC treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility.

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;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

### Good Faith Efforts when a DBE is replaced on a contract

BMC 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 DBE Liaison officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain 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, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

### **Counting DBE Participation**

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

## **COMPLIANCE AND ENFORCEMENT**

### **Information, Confidentiality, Cooperation**

We 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 MDOT) without the written consent of the submitter.

### **Monitoring Payments to DBEs**

We 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 the BMC or DOT. This reporting requirement also extends to any certified DBE subcontractor.

## **ATTACHMENTS**

Attachment 1

BRTB DBE Policy Resolution and Methodology

**BALTIMORE METROPOLITAN PLANNING ORGANIZATION**

**BALTIMORE REGIONAL TRANSPORTATION BOARD  
RESOLUTION #10-22**

**ADOPTING FOR THE BALTIMORE METROPOLITAN COUNCIL AND BALTIMORE REGIONAL TRANSPORTATION BOARD MEMBERS - A POLICY FOR DISADVANTAGED BUSINESS ENTERPRISE ACTIVITIES**

**WHEREAS**, the Baltimore Regional Transportation Board is the designated Metropolitan Planning Organization for the Baltimore region, encompassing the Baltimore Urbanized Area, and includes official representatives of the cities of Annapolis and Baltimore, the counties of Anne Arundel, Baltimore, Carroll, Harford, and Howard, and the Maryland Department of Transportation, the Maryland Department of the Environment, and the Maryland Department of Planning; and

**WHEREAS**, the Baltimore Metropolitan Council has established a Disadvantaged Business Enterprise program in accordance with regulations of the U. S. Department of Transportation, 49 CFR Part 26 on behalf of the Baltimore Regional Transportation Board. The Baltimore Regional Transportation Board, as a condition to receiving Federal financial assistance from the Department of Transportation, has signed an assurance that it will comply with 49 CFR Part 26; and

**WHEREAS**, the Baltimore Regional Transportation Board will disseminate the Disadvantaged Business Enterprise policy statement to its members, will place the policy on the Baltimore Metropolitan Council web site, will circulate it electronically to the business community, and by making it available in Baltimore Metropolitan Council's offices; and

**WHEREAS**, it is the policy of the Baltimore Regional Transportation Board to ensure that Disadvantaged Business Enterprises, as defined in Part 26, have an equal opportunity to receive and participate in Department of Transportation-assisted contracts; and

**NOW, THEREFORE, BE IT RESOLVED** that the Baltimore Regional Transportation Board adopts the Disadvantaged Business Enterprise policy as outlined in Attachment 1 as the process for use by the Baltimore Metropolitan Council and Baltimore Regional Transportation Board members when using federal funds to implement certain transportation activities in the Unified Planning Work Program.

**I HEREBY CERTIFY** that the Baltimore Regional Transportation Board as the Metropolitan Planning Organization for the Baltimore region approved the aforementioned resolution at its April 27, 2010 meeting.

April 27, 2010

\_\_\_\_\_  
Date



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Dean L. Minnich, Chairman  
Baltimore Regional Transportation Board

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM  
BALTIMORE METROPOLITAN COUNCIL**

**POLICY STATEMENT**

The Baltimore Metropolitan Council (BMC) is committed to and has developed a Disadvantaged Business Enterprise (DBE) Program that is consistent and in compliance with the federal regulations of the U.S. Department of Transportation (USDOT), Title 49 of the Code of Federal Regulations (CFR) Part 26. BMC, as a sub-recipient of federal financial assistance, has signed an assurance that it will comply with 49 CFR Part 26. Accordingly, BMC encourages DBEs to compete for BMC contracts and subcontracts and encourages joint ventures between DBE and non-DBE firms who compete for BMC contracts and subcontracts.

It is the policy of the BMC to ensure that DBEs, as defined in Part 26, have an equal opportunity to participate in the procurement process for all goods and services purchased by BMC, specifically those financed in whole or in part with federal funds. It is also our policy:

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

The Coordinator, Business Development & Governmental Relations of the BMC has been designated as the DBE Liaison Officer (DBELO) and is responsible for implementing all aspects of the DBE Program. The DBELO will be assisted by other BMC staff as needed in implementing the DBE requirements and compliance. Implementation of the DBE Program is accorded the same priority as compliance with other legal obligations incurred by BMC.

In administering its DBE Program, BMC shall not, either 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.

BMC will disseminate this DBE Program document to its members and all operating components of our organization. BMC will notify all DBE and non-DBE business communities that perform work for BMC on USDOT-assisted contracts about BMC's DBE Program by placing the DBE Program on our web site at <http://www.baltometro.org>, include reference to the DBE Program in all BMC solicitations and provide a written DBE Program available through the BMC's Regional Information Center.

### Introduction

The Baltimore Metropolitan Council (BMC) recognizes its responsibility to ensure that Disadvantaged Business Enterprises (DBEs) have equal opportunity to participate in the performance of all contracts administered by BMC, specifically those financed in whole or in part with USDOT funds. As part of the effort to fulfill this responsibility, BMC has developed this DBE Program to reflect its commitment to the requirements and guidance contained in 49 CFR Part 26.

### DBE Program Liaison Officer

The BMC Coordinator, Business Development & Governmental Relations has responsibility for implementing the DBE program. The Coordinator, Business Development & Governmental Relations will also work with other appropriate officials and BMC staff to coordinate and implement the provisions of the DBE Program. Correspondence regarding DBE matters, as they pertain to contracts administered by BMC, should be forwarded to the BMC Coordinator, Business Development & Governmental Relations at 2700 Lighthouse Point East, Suite 310, Baltimore, Maryland 21224.

The DBELO is responsible for developing, implementing and monitoring the BMC DBE Program. Duties and responsibilities include the following:

1. Gather and report statistical data and other information as required by USDOT.
2. Review third party contracts and purchase requisitions for DBE Program compliance.
3. Work with appropriate parties to set annual DBE goals.
4. Ensure that bid notices and request for proposals are available to DBEs in a timely manner.
5. Identify contracts and procurements to assure that DBE goals are included in solicitations.
6. Analyze BMC's progress toward DBE goal attainment and, if necessary, ways to improve progress.
7. Advise the BMC Board of Directors on DBE related matters and achievement.
8. Participate with Division Directors and Project Managers to determine contractor compliance with good faith efforts.

## Definitions

1. "Disadvantaged Business" means a for-profit small business concern: (a) that is at least 51percent owned by one or more socially and economically disadvantaged individuals, or, in the case of any publicly owned business, at least 51 percent of the stock of which is owned by one or more socially and economically disadvantaged individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
2. "Small Business Concern" means a small business as defined in Section 3 of the Small Business Act and Small Business Administration (SBA) regulations implementing the Act at 13 CFR Part121.
3. "Socially and Economically Disadvantaged Individuals" means those individuals who are citizens of the United States or lawfully admitted permanent residents and who are women, African Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Asian-Indian Americans or other individuals found to be socially and economically disadvantaged by the Small Business Administration pursuant to the Small Business Act.
4. "Joint Venture" means an association of a DBE firm and one or more other firms to carry out a single for-profit business enterprise for which purpose they combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

## Applicability

The DBE Program applies to all BMC goods and services purchased through a formal procurement process by the issuance of Request for Proposals (RFPs) or Invitations for Bids (IFBs).

## Goals of the DBE Program

### ***A. Overall DBE Participation Goals***

In May the BMC Coordinator, Business Development & Governmental Relations, working with BMC staff, will determine the work tasks and activities (goods and services) that might be contracted out in the upcoming fiscal year. Due to the fact that BMC uses very specific types of consultants, primarily transportation planning consultants, a number of endorsed methodologies will be used to establish overall goals for DBE participation in BMC procurements. BMC will use a bidders list to determine the relative availability of DBEs in the Baltimore metropolitan area as well as a review of its previous record for meeting its DBE participation goals. BMC will establish an overall DBE participation goal based upon an analysis of the aforementioned information. If there is no upcoming work or contracting activities then no goal will be required.

BMC will publish a notice of the proposed overall goal, advising the public of the proposed overall goal and the rationale are available for inspection during normal business hours at BMC offices for 30 days following the date of this notice. The new annual DBE goal takes effect on July 1 of each year.

### ***B. DBE Subcontract Goals***

BMC will set DBE goals for individual contracts that BMC determines will have subcontracting possibilities. BMC will review its DBE participation goals on past such contracts and the availability of DBEs in the subject areas in which subcontracts are to be awarded before setting a subcontracting DBE goal.

### **Implementation of DBE Participation Goals**

#### ***A. Methods for Achieving DBE Goals***

1. BMC will use race-neutral means to obtain DBE participation. A race neutral programs means that BMC expects to achieve its DBE goal through the normal competitive bid process. BMC will provide assistance to ensure that DBEs have the opportunity to participate in BMC procurements.
2. The BMC Coordinator, Business Development & Governmental Relations, in capacity as the BMC DBE Program Liaison Officer, reserves the right to establish DBE participation goals for specific contracts to meet any portion of BMC's DBE participation goal that BMC determines that it will not be able to meet using neutral means. Race conscious goals are those achieved through establishment of a percentage of contract cost that must be awarded to a certified DBE or good faith efforts to do so must be demonstrated.

#### **B. Identification of DBE Participants**

In a formal RFP/IFB procurement for which a contract DBE goal is established, BMC shall require all bidders to include a plan for meeting the contract DBE participation goal. Bidders' submittals shall include the name of any DBE subcontractors who will participate in the contract, a clear and concise description of the work to be performed by each DBE subcontractor, written confirmation from the DBE that it is participating in the contract as detailed in the prime contractors plan and the dollar amount of each proposed DBE subcontract. BMC may include DBE participation as an evaluation criterion in selecting bidders for award. If the contract goal is not met, evidence of good faith efforts to meet the goal must be documented and provided.

#### **C. DBE Certification**

BMC is not responsible for determining the eligibility of any particular company to be certified as a DBE. A directory of Maryland Department of Transportation (MDOT) certified DBE firms is maintained on their web site (<http://mbe.mdot.state.md.us>). If the DBE has not been certified by MDOT but has been certified by other state transportation agencies receiving federal

funding, the name of the agency should be included in the proposal. The BMC reserves the option to accept this certification in lieu of MDOT certification.**D.**

#### **D. Good Faith Efforts**

It is the obligation of the bidder to make good faith efforts in meeting DBE contract goals either by meeting the contract goal or by documenting good faith efforts. The BMC Project Manager is responsible for notifying the BMC DBELO of a situation where it appears that the bidder has not met the DBE contract goal. The BMC DBELO can request additional documentation regarding the bidder's efforts to meet the DBE contract goal prior to the issuance of a final determination of whether the bidder made adequate good faith efforts to meet the contract goal.

BMC will also include in contracts with a DBE goal a provision stating that prime contractors can not terminate a DBE subcontractor for convenience and then perform the work of the terminated subcontractor with its own forces, or that of an affiliate, without the prior written approval of the BMC DBELO. If the prime contractor does terminate a subcontractor or if a DBE subcontractor fails to complete its work for any reason, the prime contractor will be required to make good faith effort to find another certified DBE subcontractor to substitute for the original DBE. If the prime contractor fails or refuses to comply within an agreed time period, the BMC Coordinator, Business Development & Governmental Relations may issue a formal order stopping all or part of work/payment until satisfactory action has been taken. If the prime contractor still fails to comply or resolve the issue to the satisfaction of the BMC Coordinator, Business Development & Governmental Relations, the BMC Executive Director may terminate the contract.

#### **E. Contract Assurance**

BMC will incorporate into each USDOT-assisted contract it signs with a prime contractor and require in each subcontract (that the prime subcontractor signs with a subcontractor) the following clauses:

*The contractor 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 USDOT-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 remedy as the recipient deems appropriate.*

#### **F. Record Keeping and Reporting**

BMC will maintain a bidder's list, consisting of information about all DBE and non-DBE firms that bid or quote on any formal procurement contract proffered by BMC. The purpose of the list is to provide BMC as accurate data as possible about available DBE and non-DBE firms who seek to work on BMC contracts regardless of fund source and for BMC's use of the bidders list approach to assist in calculating its overall goal. The bidders list will include the name, address,

DBE or non-DBE status, age and annual gross receipts of firms. Information for the bidders list may be collected as determined by BMC, including, but not limited to, collecting said information from all bidders before or after the bid due date or conducting an alternative information collection method. For contracts that have a DBE contract goal, BMC shall obtain reports from prime contractors on their progress in meeting the DBE participation goal in their contracts.

#### **G. Program Monitoring**

For contracts that include a DBE contract goal, BMC will implement appropriate mechanisms to ensure compliance with the DBE requirements of the contract. When a DBE subcontractor begins work on the project, BMC will review all available information to verify that the DBE contractor identified will perform a commercially useful function and must be ready, willing and able to carry out its responsibilities by actually performing, managing and supervising the work involved, consistent with standard industry practices. If BMC determines that the DBE contractor is not performing a commercially useful function, BMC will notify the prime contractor in writing regarding the finding and provide the contractor 10 work days to eliminate the contract infraction.