

Enrolled 6
~~PROPOSED ORDINANCE 156-6~~

ADOPT DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

WHEREAS Waukesha County operates a transit system through purchased service contracts, and

WHEREAS the County funds a portion of the costs of said service through Federal Transit Administration Section 5307 monies, and

WHEREAS a condition of utilizing said Federal funds is a county Disadvantaged Business Enterprise (DBE) program meeting federal requirements, and

WHEREAS said DBE Program must be adopted by the governing body having control of the program.

THE COUNTY BOARD OF SUPERVISORS OF THE COUNTY OF WAUKESHA DOES ORDAIN that the Disadvantaged Business Enterprise (DBE) Program, on file in the office of the County Clerk, is hereby adopted.

BE IT FURTHER ORDAINED that a copy of said program be transmitted by the Department of Public Works to the Federal Transit Administration.

Referred on: 04/10/01

File Number: 156-O-006

Referred to: PW- FI

ADOPT DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Presented by:
Public Works Committee

Richard L. Manke
Richard L. Manke, Chair

Kathleen M. Cummings
Kathleen M. Cummings

Ernest J. La Monte
Ernest J. La Monte

Rodell L. Singert No
Rodell L. Singert

David W. Swan
David W. Swan

Bernard J. Tesmer
Bernard J. Tesmer

Chuck Wichgers
Chuck Wichgers

Approved by:
Finance Committee

Duane Stamsta
Duane Stamsta, Chair

James R. Behrend
James R. Behrend

Donald M. Broesch
Donald M. Broesch

Genia C. Bruce
Genia C. Bruce

Joe C. Marchese
Joe C. Marchese

absent
Karen J. McNelly

Ronald V. Rydberg
Ronald V. Rydberg

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, was presented to the County Executive on:

Date: April 27, 2001, Patricia E. Madden
Patricia E. Madden, County Clerk

The foregoing legislation adopted by the County Board of Supervisors of Waukesha County, Wisconsin, is hereby:

Approved: ✓
Vetoed: _____

Date: 4-30-01, D. M. Finley
Daniel M. Finley, County Executive

WAUKESHA COUNTY DBE PROGRAM

Definitions of Terms

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

Objectives/Policy Statement (26.1, 26.23)

The County of Waukesha, Wisconsin has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. Waukesha County has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, Waukesha County has signed an assurance that it will comply with 49 CFR Part 26.

It is Waukesha County's policy to ensure that DBEs as defined in Part 26 have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also policy:

1. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
3. To ensure that 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; and
6. To assist the development of firms that can compete successfully in the market beyond the DBE Program.

Susan M. Connelly, Purchasing Manager, has been delegated as the DBE Liaison Officer. In that capacity, Ms. Connelly 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 Waukesha County in its financial assistance agreements with the Department of Transportation.

Waukesha County has disseminated this policy statement to the County Board of Supervisors and all the components of our organization. Waukesha County will distribute this statement to DBE and non-DBE business communities that perform work on USDOT-assisted contracts by mail.

Date: _____
by: Daniel M. Finley
County Executive

Nondiscrimination (26.7)

Waukesha County 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, Waukesha County 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.

DBE Program Updates (26.21)

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

Quotas (26.43)

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

DBE Liaison Officer (DBELO) (26.45)

Waukesha County has designated the following individual as our DBE Liaison Officer: Susan M. Connelly, Purchasing Manager, 1320 Pewaukee Rd., Waukesha, WI 53188, Phone: 262-548-7888, e-mail: sconnelly@waukeshacounty.gov. In this capacity, Ms. Connelly is responsible to implement all aspects of the DBE program and ensure that Waukesha County complies with all provisions of 49 CFR Part 26. Ms. Connelly has access to the County Executive concerning DBE program matters. The DBELO has support staff available to assist in the program.

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

1. Gathers and reports statistical data and other information as required by USDOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
5. Analyzes Waukesha County's progress toward goal attainment and identifies ways to improve progress.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and achievement.

8. Participates with the legal counsel and project director to determine contractor compliance with good faith efforts.
9. Provides DBEs with information in preparing bids.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.
12. Maintains Waukesha County's updated directory on certified DBEs.

Federal Financial Assistance Agreement Assurance (26.13)

Waukesha County has signed the following assurance, applicable to all USDOT-assisted contracts and their administration: (This language will appear in financial assistance agreements with subrecipients.)

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

DBE Financial Institutions

Waukesha County's policy is to investigate services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contracted to make use of these institutions.

Directory (26.25)

The uniform certification program agency of WISDOT maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firms' names, addresses, phone numbers, data of most recent certifications, and the type of work the firms have been certified to perform as DBEs. The Directory is updated quarterly. The Directory is mailed to all prime contractors within the State of Wisconsin. The Directory is also available upon request to Ms. Joanne Couey, DBE Programs Office, Wisconsin Department of Transportation, P.O. Box 7969, Madison, WI 5707-7969; telephone: 608-266-6961.

Required Contract Clauses (26.13, 26.29).

Contract Assurance

Waukesha County will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

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 administration of 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 other remedy as the recipient deems appropriate.

Prompt Payment

Waukesha County will include the following clause in each USDOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 10 calendar days from the receipt of each payment the prime contractor receives from the County. The prime contractor agrees further to return retainer payments to each subcontractor within 10 calendar 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 County. This clause applies to both DBE and non-DBE subcontractors. Failure to follow this procedure is considered a breach of contract.

Monitoring and Enforcement Mechanisms (26.37)

Waukesha County will notify the Department of Transportation of any false, fraudulent, or dishonest conduct in connection with the program so that the USDOT can take the appropriate action (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. Waukesha County also will consider similar action under its own legal authorities, including responsibility determinations in future contracts.

Overall Goals (26.45)

Amount of Goal

Waukesha County's overall goal for FY 2000 is 4.5% of the Federal financial assistance expended for USDOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

METHOD

The method used by Waukesha County to calculate this goal follows below:

OVERALL GOALS – FY 2001

4.5% Percentage of all contractible federal transit funds

2.0% Race and Gender-Conscious Component

2.5% Race and Gender-Neutral Component (Construction projects above \$250,000 will have a DBE goal separate from the 4.5% goal. No projects of this type are schedule for FY 2001).

PROCESS FOR GOAL SETTING

Goal setting for Fiscal Year 2001 was based upon experience obtained in Fiscal Year 2000. In addition, all Wisconsin transit operators met with the Wisconsin Department of Transportation (WISDOT) and shared data on the availability of DBEs.

GOAL SETTING METHODOLOGY

Using a “head-count” methodology, there are 64 DBE firms and 1,413 non-DBE firms reported as contractors/vendors to transit system operations, for a total supplier count of 1,477. WISDOT obtained this data through a survey of each transit operator in the state. This yields the following goal percentage:

$$64/1,477 = 4.5\%$$

Using a capacity methodology, Waukesha County purchased services worth \$4,344,000 in Fiscal Year 2000. Of this total, approximately \$250,300 was subcontracted from certified DBE firms. This yields:

$$\$250,300/\$4,344,000 = 5.8\%$$

Based upon the above information, Waukesha County decided to utilize the lower of the two numbers, 4.5%. This is based on a trend toward a declining number of DBE firms willing to participate in the program because of the financial disclosures required of DBE firms under the current regulation and Wisconsin’s open records law.

Process

Waukesha County will submit its overall goal to USDOT on August 1 of each year.

Before establishing the overall goal each year, Waukesha County will obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Waukesha County's efforts to establish a level playing field for the participation of DBEs.

Waukesha County will publish a notice of the proposed overall goal to inform the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice. It will also serve to inform the public that Waukesha County and USDOT will accept comments on the goals for forty-five days from the notice date. Normally, this notice will be issued annually by June 1. The notice will include addresses to which comments may be sent, and addresses (including offices and websites) where the proposal may be reviewed.

Waukesha County's overall goal submission to USDOT will include a summary of information and comments received during the public participation process and our responses.

Waukesha County will begin using the overall goal annually on October 1, unless other instructions have been received from USDOT.

Breakout of Estimated Race-Neutral and Race-Conscious Participation

Waukesha County will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation.

Waukesha County estimates that to meet the overall goal of 4.5%, % will be obtained from 2.5% race-neutral participation, and 2.0% from race-conscious measures.

Waukesha County 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 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.

For reporting purposes, DBE participation includes but is not 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; or DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

Contract Goals (26.51)

Waukesha County will use contract goals to meet any portion of the overall goal Waukesha County does not project being able to meet. 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 overall goal not projected to be met through race-neutral means.

Waukesha County will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. Waukesha County 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).

Waukesha County will express its contract goals as a percentage of the Federal share of a USDOT-assisted contract.

Good Faith Efforts (26.53)

Waukesha County treats bidders'/offerors' 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 participation
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 contractor's commitment; and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of good faith efforts

The bidder's/offeror's obligation 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. Examples of good faith efforts are found in Appendix A to 49 CFR Part 26. The DBELO and staff are responsible for determining whether a bidder/offeror not meeting the contract goal has documented sufficient good faith effort to be regarded as responsible.

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

Administrative reconsideration

Within five (5) calendar days of being informed by Waukesha County that it is not responsible 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: Norm Cummings, Director of Administration, 1320 Pewaukee Road, Waukesha, WI 53188, Phone : 262-548-7020, e-mail: ncummings@co.waukesha.WI.US. The reconsideration official will not have had any role in the original determination that the bidder/offeror made insufficient 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 has met the goal or has made adequate good faith efforts to do. Waukesha County 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 made adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the US Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract

Waukesha County 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. Waukesha County will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and to provide reasonable documentation.

In this situation, Waukesha County 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, Waukesha County's 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 (26.55)

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

Certification (26.61 - 26.91)

Waukesha County will continue to use the certification standards and lists of firms determined by the State of Wisconsin.

Process

For information about the certification process or to apply for certification, firms should contact Susan M. Connelly, Purchasing Manager, 1320 Pewaukee Rd., Waukesha, WI 53188, Phone: 262-548-7888, e-mail: sconnelly@waukeshacounty.gov.

If Waukesha County proposes to remove a DBE's certification, it will follow procedures consistent with Section 26.87.

Unified Certification Program

Waukesha County participates in a uniform certification plan administered by the Wisconsin Department of Transportation.

Certification Appeals

Any firm or complainant may appeal our decision in a certification matter to USDOT. Such appeals may be sent to:

Department of Transportation Office of Civil Rights Certification Appeals Branch,
400 7th St. SW, Room 2104, Washington, D.C. 20590

Waukesha County will promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for our USDOT-assisted contracting.

"Recertification"

Does not apply: Handled by WISDOT.

"No Change" Affidavits and Notices of Change

Waukesha County requires all DBEs to submit a written affidavit of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with a DBE's application for certification.

Waukesha County also requires all certified DBE owners to submit on the anniversary date of their certification, a "no change" affidavit meeting the requirements of 26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of (names of DBE firm) affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of

49 CFR Part 26. There have been no material changes in the information provided with (name of DBE's) application for certification, except for any changes about which you have provided written notice to the (*Name Recipient*) under 26.83(I). (Name of firm) meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm's previous three fiscal years do not exceed \$16.6 million.

Waukesha County requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts.

Waukesha County will notify all currently certified DBE firms of these obligations annually. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he/she or the firm fail to meet a Part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Personal Net Worth

Waukesha County will require all disadvantaged applicant owners and currently-certified DBEs whose eligibility under Part 26 is reviewed to submit a statement of personal net worth as part of the application.

Information Collection and Reporting

Bidders List

Waukesha County will create a bidders' list that consists of information about all DBE and non-DBE firms that bid or provide quotes for USDOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list to calculate overall goals. The bidders' list will include the name, address, and DBE/non-DBE status of firms.

Waukesha County will confirm DBE status with the State of Wisconsin list.

Monitoring Payments to DBEs

Waukesha County will require prime contractors to maintain records and documents of payments to DBEs during the performance of the contract. These records will be made available for inspection upon request by any authorized representative of Waukesha County or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

Waukesha County will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. Waukesha County will perform interim 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.

Reporting to USDOT

Waukesha County will report DBE participation on a quarterly basis, using USDOT Form 4630.

Confidentiality

Waukesha County 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, Waukesha County will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than to USDOT) without the written consent of the submitter.

FISCAL NOTE

ADOPT DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

The ordinance adopts the Waukesha County Disadvantaged Business Enterprise (DBE) program. The County was notified as not being in compliance with this federal requirement for funding as part of the Federal Transit Administration 1999 triennial audit. The 2001 adopted budget includes \$1.04 million of Federal operating assistance for transit services. According to the Transit Program coordinator, the funding is at risk if the program is not in place.

The program will add additional contract requirements to transit contracts bid in the future and require additional reporting to monitor progress towards goals. Some additional consulting costs may be incurred, however at this time costs cannot be determined. Required reporting and procedures along with available resources including Federal reimbursement will be reviewed by Purchasing and Transit Services and requested in the 2002 budget.



Keith K. Swartz
Budget Manager

LGW
4/9/01

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156-0-006

WAUKESHA COUNTY BOARD OF SUPERVISORS

V

DATE-04/24/01

(ORD) NUMBER-1560006

1 K. HERRO.....AYE
 3 D. STAMSTA.....AYE
 5 J. MARCHESE.....AYE
 7 J. JESKEWITZ.....AYE
 9 S. WOLFF.....AYE
 11 B. TESMER.....
 13 E. LA MONTE.....AYE
 15 D. SWAN.....AYE
 17 J. BEHREND.....AYE
 19 C. SEITZ.....AYE
 21 W. KOLB.....NAY
 23 E. KRAUS.....AYE
 25 K. CUMMINGS.....AYE
 27 D. PAULSON.....AYE
 29 J. MAAS.....AYE
 31 V. STROUD.....AYE
 33 P. GUNDRUM.....AYE
 35 K. McNELLY.....

2 C. WILSON.....AYE
 4 D. MEISSNER.....AYE
 6 D. BROESCH.....AYE
 8 J. DWYER.....AYE
 10 P. HAUKOHL.....AYE
 12 J. WILLIAMS.....AYE
 14 J. LA PORTE.....AYE
 16 R. MANKE.....AYE
 18 J. ARNDT.....AYE
 20 M. KIPP.....AYE
 22 G. BRUCE.....AYE
 24 R. RYDBERG.....AYE
 26 P. VRAKAS.....AYE
 28 P. JASKE.....AYE
 30 M. THOMAS.....AYE
 32 C. WICHGERS.....AYE
 34 R. SINGERT.....NAY

TOTAL AYES-31

TOTAL NAYS-02

CARRIED X

DEFEATED _____

UNANIMOUS _____

TOTAL VOTES-33