



## 23-002 DBE Clarification

*The federal clauses listed below can be found on page 17 of the "Appendix 10 – Federal Clauses" document.*

### **DISADVANTAGED BUSINESS ENTERPRISE (DBE)**

It is the policy of the Agency and the United States Department of Transportation ("DOT") that Disadvantaged Business Enterprises ("DBE's"), as defined herein and in the Federal regulations published at 49 C.F.R. part 26, shall have an equal opportunity to participate in DOT-assisted contracts.

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 C.F.R. 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 Agency deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible. 49 C.F.R. § 26.13(b).

Prime contractors are required to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment the Agency makes to the prime contractor. 49 C.F.R. § 26.29(a).

Finally, for contracts with defined DBE contract goals, each FTA Recipient must include in each prime contract a provision stating that the contractor shall utilize the specific DBEs listed unless the contractor obtains the Agency's written consent; and that, unless the Agency's consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed. 49 C.F.R. § 26.53(f) (1).

### **DBE Contract Goals**

It is the policy of the Bis-man Transit Board that Disadvantaged Business Enterprises (DBEs) shall have equal opportunity to compete for and perform subcontracts that the Contractor enters into pursuant to this contract. The Contractor must use good faith efforts to include DBE subcontractors. Consequently, the requirements of Title 49 CFR Part 26 apply to this contract. The Contractor must ensure that the DBE subcontractor(s) performs a "commercially useful function" as defined in 49 CFR 26.55.

At least .05 percent (.05%) of this contract shall be subcontracted to DBE firms that have been certified as a DBE by the North Dakota Department of Transportation. This percentage will be evaluated based on



the federal fiscal year (October – September).

<https://www.dot.nd.gov/divisions/civilrights/dbeprogram.htm>

In order to be assured that the Contractor complies with this contractual requirement during the course of the work, the Contractor shall:

Prior to starting work, provide a written plan for DBE participation, including a description of work to be performed by each DBE subcontractor, and a projected percentage of DBE participation during each step of the work.

Provide an ongoing summary of DBE subcontractor amounts invoiced, for the current invoice and as a running total for the contract.

Provide a monthly report of the amounts actually paid to DBE subcontractor, and certification by the subcontractors of the amounts received.

Provide a written explanation if the level of DBE participation falls below the level stated in the DBE implementation plan, including a plan to meet the goal. If the goal cannot be met, the Contractor will be required to establish good faith efforts (GFEs).



3750 E Rosser Avenue,  
Bismarck, ND 58501



701.258.6817



[info@bisantransit.com](mailto:info@bisantransit.com)



[www.bisantransit.com](http://www.bisantransit.com)

Bis-Man Transit delivers valued public transportation, linking people, jobs and communities.

 3750 E Rosser Avenue,  
Bismarck, ND 58501

 [info@bisantransit.com](mailto:info@bisantransit.com)

 701.258.6817

 [www.bisantransit.com](http://www.bisantransit.com)