

**CITY OF EAU CLAIRE
EAU CLAIRE TRANSIT (ECT) DIVISION DISADVANTAGED
BUSINESS ENTERPRISE (DBE) PROGRAM**

Updated: July 31, 2019

Definitions of Terms

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

Objectives/Policy Statement (§26.1, 26.23)

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

It is the policy of the City of Eau Claire, Transit Division to ensure that DBE's as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts with a goal and objective to:

1. Ensure non-discrimination in the award and administration of DOT assisted contracts;
2. Create a level of playing field on which DBE's can compete fairly for DOT assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBE's in DOT assisted contracts;
6. Assist in the development of firms that can compete successfully in the market place outside the DBE Program.

The Transit Manager, has been designated as the DBE Liaison Officer. In that capacity, he/she 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 the City of Eau Claire in its financial assistance agreements with the Department of Transportation.



Brian G. Amundson
City Manager

6/20/2012

Date

Non-discrimination (§26.7)

The City of Eau Claire will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the City of Eau Claire will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating, or substantially impairing the 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)

The City of Eau Claire will continue to carry out this program until all funds from USDOT financial assistance have been expended. The USDOT will be provided updates representing significant changes in the program.

Quotas (§26.42)

The City of Eau Claire will not use set-aside or quotas in administering the DBE Program.

DBE Liaison Officer (DBELO) (§26.45)

The following individual is designated as The City of Eau Claire- Transit Division DBE Liaison Officer:

Thomas Wagener, Transit Manager
City of Eau Claire
910 Forest Street
Eau Claire, WI 54703
(715) 839-5111
Mike.Branco@eauclairewi.gov

In that capacity, Mr. Wagener is responsible for implementing all aspects of the DBE program and ensuring that the City of Eau Claire complies with all provisions of 49 CFR Part 26. Mr. Wagener as Transit Manager has direct, independent access to the City Manager concerning DBE program matters.

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

- Responsible for the overall implementation, administration and monitoring of the City of Eau Claire – Transit Division DBE Program.

- Gathers and reports statistical data and other information as required by USDOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Sets overall annual goals.
- Ensures that bid notices and requests for proposals are available to DBE's in a timely manner.
- Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
- Analyzes the City of Eau Claire – Transit Division progress toward goal attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the City Council and Transit Commission on DBE matters and achievement.
- Determines contractor compliance with good faith efforts.
- Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
- Plans and participates in DBE training seminars.
- Provides outreach to DBEs and community organizations to advise them of contracting opportunities.
- Maintains the City of Eau Claire's updated directory on certified DBEs in the area.

Federal Financial Assistance Agreement Assurance (§26.13)

The City of Eau Claire has signed the following assurance, applicable to all USDOT-assisted contracts and their administration:

The City of Eau Claire 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 recipient 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 the City of Eau Claire 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.).

DBE Financial Institutions

It is the policy of the City of Eau Claire 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 USDOT-assisted contracts to make use of these institutions.

A search has been conducted of Wisconsin Department of Transportation DBE Director to identify such institutions.

Directory (§26.25)

The City of Eau Claire utilizes a directory developed by WisDOT identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, telephone number, date of most recent certification, and the type of work that has been certified to perform as a DBE. The directory is updated quarterly.

Copies of the annual Directory and the subsequent revisions are mailed to every DBE firm certified with WisDOT's DBE Office. Directories are also mailed to all prime contractors within the State. WisDOT has developed a web site so that interested parties can access information electronically via the internet. Directories can be obtained from: Wisconsin Department of Transportation, Office of Disadvantaged Business Enterprise Programs, 4822 Madison Yards Way, 5th Floor South, Madison, Wisconsin, 53705, Telephone (608) 267-3849, Fax (608) 267-3641, internet <https://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/default.aspx>.

Overconcentration (§26.33)

We have not identified the existence of an overconcentration in the types of work that DBEs perform.

Required Contract Clauses (§§26.13, 26.29)

Contract Assurance

The following clause will be 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 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.

Prompt Payment

The following clause will be included in each USDOT-assisted prime contract:

The prime contractor agree to pay each subcontractor under the prime contract for satisfactory performance of its contract no later than 10 days from receipt of each payment the prime contractor receives from the City of Eau Claire. The prime contractor agrees further to return retainage payments to each subcontractor within 10 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 City of Eau Claire. This clause applies to both DBE and non-DBE subcontractors.

Monitoring and Enforcement Mechanisms (\$26.37)

The City of Eau Claire tracks actual payments made to DBE contractors through its financial software, currently MUNIS. The Transit Manager reviews the financial records when DBE's are involved in a project to ensure prompt payment.

The Transit Manager will work with any prime contractors that are using DBE subcontractors to ensure their compliance with this practice.

We will bring to the attention of the U.S. 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. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

Overall Goals (\$26.45)

Amount of Goal

The City of Eau Claire's overall goal for FY-2020 will be .71%.

Method

Documentation of the tables used to determine this goal are included in Attachment 1. The city used the average # of opportunities and average Award amounts over the last 2 years to determine the # of opportunities for FY – 2020. Then we used the 2018 State of Wisconsin State and Local Sales and Use Tax Report to determine how many total businesses were ready and willing to business in Eau Claire based on the three digit NAICS codes that the city provided opportunities in. The city used the WisDOT db-e-ucp-directory to determine how many DBEs are Ready and Willing in the area.

Transit Vehicle Manufacturers (\$26.49)

The City of Eau Claire will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, the City of Eau Claire, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the transit vehicle manufacturer complying with his element of the program.

Process

The City of Eau Claire will submit its overall goal to DOT by August 1 of each year.

Before establishing the overall goal, the City of Eau Claire will consult with the Wisconsin Department of Transportation DBE Office and any other interested parties to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Eau Claire's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goal informing the public that the proposed goal and its rationale are available for inspection during normal business hours. These items will be available at our principal office for a period of 30 days following the date of notice. The notice will also inform the public that the FTA and DOT will accept comments on the goals for 45 days from the date of the notice. Normally we will issue this notice by August 1st if the goal will be updated. The notice will include addresses to which comments may be sent and address where the proposal may be reviewed.

The overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

The City will begin using the overall goal on October 1 of each year, unless other instructions are received from DOT.

Contract Goals (\$26.51)

The City of Eau Claire will use contract goals to meet any portion of the overall goal the City of Eau Claire 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 USDOT-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).

Good Faith Efforts (\$26.53)

Information to be submitted

The City of Eau Claire treats bidder/offeror's compliance with good faith efforts requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidder/offerors to submit the following information within five days of the award of the bid:

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 work to be performed by each DBE firm participating as a subcontractor.
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 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 Purchasing Department is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as 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.

Administrative reconsideration

Within five days of being informed by the City of Eau Claire that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request an administrative reconsideration. Bidders/offerors should make this request in writing to the Purchasing Department.

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 our officials to discuss the issue of whether it met the goal or made adequate good faith efforts. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts. The result of the reconsideration process is administratively final and may not be appealed to the U.S. Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract

The City of Eau Claire 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 Purchasing Department 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 Purchasing Department may issue a termination for default proceeding.

Counting DBE Participation (§26.55)

The City of Eau Claire will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

Certification (§26.61 – §26.91)

Process

The City of Eau Claire will assist firms that desire to be certified through the State of Wisconsin Unified Certification Program.

For information about the certification process or to apply for certification, firms may contact Eau Claire Transit or the WisDOT DBE office referenced previously.

In the event we propose to remove a DBE's certification, we will follow procedures consistent with §26.87.

Unified Certification Program

WisDOT has established a unified Certification Program that will be utilized by the City of Eau Claire. Information regarding this program can be found at <https://wisconsindot.gov/Pages/doing-bus/civil-rights/dbe/certified-firms.aspx>

Certification Appeals

Any firm or complainant may appeal any 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, DC 20590

We will promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for our USDOT-assisted contracting (e.g., certify a firm if USDOT has determined that our denial of its application was erroneous).

Information Collection and Reporting

Bidders List

The City of Eau Claire will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts.

Reporting to USDOT

We will report DBE participation of USDOT as follows:

The City of Eau Claire's Transit Division will report DBE participation on a quarterly basis, using USDOT Form 4630. These reports will reflect payments actually made to DBEs on USDOT-assisted contracts.

Confidentiality

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 USDOT) without the written consent of the submitter.

**CITY OF EAU CLAIRE
EAU CLAIRE TRANSIT (ECT) DIVISION SMALL
BUSINESS ENTERPRISE (SBE) PROGRAM**

Dated: July 31, 2019

The Mission

“To provide an effective outreach strategy that will establish a communications network and identify distribution channels to keep the Small Business community aware of procurement opportunities, to provide a fair, open, and transparent procurement process, and to provide the necessary support services to increase capacity and ensure retention.”

The following components form the basis for the SBE Program:

- Establish commitment to Good Faith Efforts that meet or exceed the SBE Goal established by Eau Claire Transit.
- Comply with Federal Regulations 49 CFR Part 26 and FTA Circular C 4220.1F.
- Provide opportunities by maximizing the use of SBE subcontractors and suppliers.
- Establish and maintain a working relationship with Eau Claire Transit, and other stakeholders, based on teamwork and cooperation.
- Track, measure, and report performance in a timely manner and on a periodic basis.

SBE Goal/Plan

Attachment 1 is the history of contracting opportunities for the City of Eau Claire. For the three years from 2017-2018 total contracting opportunities was \$480,700.82.

Of this amount - \$242,530.40 went to a small business contracting employing less than 50 staff. Eau Claire Transit prides itself on Small business inclusion.

Based on the history of Small Business inclusion the City of Eau Claire – Transit Division SBE goal will be twenty-five percent (25%) of contracting opportunities.

The City of Eau Claire plans to track and measure SBE involvement in each bid that is done to insure DBE and SBE involvement.