

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

### **Tioga County Disadvantaged Business Enterprise Plan (DBE)**

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#### **POLICY STATEMENT**

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

It is the policy of Tioga County to ensure that DBEs have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure non-discrimination 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;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The Deputy Commissioner of Public Works has been appointed as the DBE Liaison Officer (DBELO). In that capacity, the Deputy Commissioner of Public Works 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 Tioga County in its financial assistance agreements with the Department of Transportation.

Tioga County has disseminated this policy statement to the Tioga County Legislature and all of the components of our organization. Tioga County has distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts as a contract attachment.

  
Martha Sauerbrey, Legislative Chair

7-18-23  
Date

## GENERAL REQUIREMENTS

Tioga County is the recipient of federal -aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

Tioga County 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 TEA-21, Pub. L. 105-178.

### **Non-discrimination Requirements:**

Tioga 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, Tioga 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.

### **Record Keeping Requirements:**

Tioga County will report DBE participation to DOT as follows:

- FHWA Recipients will report DBE participation on a quarterly basis, using DOT Form 4630.
- FTA Recipients will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

**Bidders List:**

Tioga County will utilize a bidders list from the New York State Unified Certification Directory and the New York State MWBE Directory to provide information on contracting opportunities to all DBE and non-DBE firms that bid or quote on FTA/FHWA-assisted contracts.

The bidders list includes the name, address, phone number, fax number, e-mail address of the small business, as well as the contract person and general description of goods and/or services available from each specific small business. In addition, the bidders list will include the DBE/non-DBE status.

The DBELO or designee will collect this information by requiring any firm registering for its bidders list to submit proof of their certification as a DBE by NYS Unified Certification Program (UCP). The DBELO or their designee will confirm the vendor's registration through the UCP.

**Federal Financial Assistance Agreement:**

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

**Assurance:**

Tioga County 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 non-discrimination 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 [Recipient] of its failure to carry out its approved program, the Department may impose sanction as provided 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:**

Tioga County 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.

## **ADMINISTRATIVE REQUIREMENTS**

### **DBE Program Updates:**

Since Tioga County has received an FTA and/or FHWA grant(s), Tioga County will continue to carry out this program until all funds from DOT financial assistance have been expended. Tioga County will provide to DOT updates representing significant changes in the program.

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

Tioga County has designated the Deputy Commissioner of Public Works, 477 Route 96, Owego, NY 13827, 607-687-0302, as Tioga County's DBE Liaison Officer.

In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that Tioga County complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Chair of the Legislature concerning DBE Program matters.

The DBELO is responsible for developing, implementing, and monitoring the DBE Program, in coordination with other appropriate officials. The DBELO has staff 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 FTA/FHWA.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Determines Tioga County's annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements that include DBE reporting when necessary.
6. Analyzes Tioga County's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.

8. Advises the Commissioner of Public Works on DBE matters and achievement.
9. Determine contractor compliance with good faith efforts.
10. Utilize NYSDOT's UCP Directory to identify Certified DBE's.

**DBE Financial Institutions:**

It is the policy of Tioga County 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 make use of these institutions. Tioga County has made efforts to identify and use such institutions, however no such institutions exist in Tioga County.

**Prompt Payment Mechanisms:**

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

**Directory:**

Tioga County is a non-certifying member of the New York Certification Program (UCP). The UCP maintains a directory identifying all firms eligible to participate as DBEs which contains all the elements required. The New York UCP Directory can be found at <https://nysucp.newnycontracts.com/>.

**Overconcentration:**

Tioga County has not identified that overconcentration exists in the types of work that DBEs perform.

**Business Development Programs:**

Tioga County has a business development program. The daily work of responding to the needs of industry and businesses is the task of Tioga County Economic Development and Planning. However, full implementation of assistance also requires the assistance of the County's Local Development Corporation and

Industrial Development Agency. For information regarding Tioga County's business development programs, please contact Tioga County Economic Development and Planning located at 56 Main Street, Room 109, Owego, New York 13827.

### **Monitoring and Enforcement Mechanisms:**

Tioga County 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. Tioga County will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. Tioga County 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 DEBLO.
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, GOOD FAITH EFFORTS, AND COUNTING**

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

Tioga County does not use quotas in any way in the administration of this DBE Program.

### **Overall Goals:**

Tioga County will establish an overall DBE goal covering three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. Tioga County will submit its Overall Three-year DBA Goal to FTA/FHWA by August 1 of the year in which the goal is due.

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If Tioga County does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will

not be developed. However, this DBE Program will remain in effect and Tioga County will seek to fulfill the objectives outlined elaborated in the policy statement located on the first page of this program.

Step 1: The first step is to determine a base figure for the relative availability of DBEs in the market area. Tioga County will use the DBE Directory Information and Census Bureau Data as a method to determine the base figure.

Step 2: The second step is to adjust, if necessary, the base figure percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Tioga County will examine all the evidence that is available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will be based on demonstratable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in the Tioga County market.

Following this consultation, Tioga County will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Ronald E. Dougherty County Office Building for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. Normally, Tioga County will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

Tioga County will begin using our overall goal on October 1 of each year unless having received other instructions from DOT. If Tioga County establishes a goal on a project basis, Tioga County will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

### **Transit Vehicle Manufacturers Goals:**

Tioga County will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA and/or FHWA procurements, to certify that it has complied with the requirements of this section. Alternatively, Tioga County may, at its discretion and with FHWA approval, establish project-specific



goals for DBE participation in the procurement of transit vehicles in lieu of the Transit Vehicle Manufacture complying with this element of the program.

### **Breakout of Estimated Race-Neutral and Race-Conscious Participation**

Tioga County will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE goal.

Race-neutral means include but are not limited to the following:

1. DBE participation through a prime contract that a DBE obtains through customary competitive procurement procedures;
2. DBE participation through a subcontract on a prime contract that does not carry a DBE goal;
3. DBE participation on a prime contract exceeding a contract goal;
4. DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

### **Contract Goals:**

Tioga County will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. Tioga 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.

Tioga County will express our contract goals as a percentage of the Federal share of a DOT-assisted contract.

### **Good Faith Efforts Procedures:**

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.

Tioga County 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:**



Tioga County treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offers 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.

**Administrative reconsideration:**

Within thirty days of being informed by Tioga County that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offers should make this request in writing to the following reconsideration official: The County Attorney's Office located at 56 Main Street, Room 103, Owego, New York 13827, 607-687-8253. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient 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 our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. Tioga 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 make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

**Good Faith Efforts when a DBE is replaced on a contract:**

Tioga 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. Tioga County 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, Tioga County 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, Tioga County will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, Tioga County 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 Tioga County to practice non-discrimination 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/offerors, including those who qualify as a DBE. A DBE contract goal of \_\_\_\_ percent has been established for this contract. The bidder/offeror shall make good faith efforts to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror 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/offeror'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.

**Counting DBE Participation:**

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

**CERTIFICATION STANDARDS**

**Certification Process:**

Tioga County does not certify DBEs and will rely on NYSDOT United Certification Program to certify DBEs and will accept all certification decisions made by NYSDOT's UCP. Any business wishing to be certified as a DBE business will be referred to NYSDOT.

For information about the certification process or to apply for certification, firms should contact:

Department of Transportation, Departmental Office of Civil Rights  
1200 New Jersey Ave, S.E. Washington, DC 20590.  
Phone: 202-366-4648  
Fax: 202-366-5575

## **CERTIFICATION PROCEDURES**

### **Unified Certification Programs:**

Tioga County is a member of a United Certification Program (UCP) administered by the New York State Department of Transportation. The UCP will meet all the requirements of this section.

## **COMPLIANCE AND ENFORCEMENT**

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

Tioga County will safeguard from disclosing to third parties' information that may reasonably be regarded as confidential business information, consistent with Federal, State, and Local law. It is the policy of Tioga County government that the public should generally have free and easy access to county government records except as restricted by Federal or State law or to support individual personal privacy. The County's records management and FOIL process is governed by NYS Public Officers Law, Article 6 and the County follows the New York State LGS-1 Schedule for managing document retention and disposition.

Notwithstanding any contrary provisions of State or Local law, Tioga County 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:**

Tioga County 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 Tioga County or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Tioga 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.