

**RESOLUTION NO. 29-11**  
**A RESOLUTION AUTHORIZING THE DISADVANTAGED BUSINESS**  
**ENTERPRISE (DBE) PROGRAM**

WHEREAS, the U.S. Department of Transportation is authorized to make grants to states through the Federal Transportation Administration (FTA) to support capital and operating assistance projects for non-urbanized public transportation systems under Section 5307 of the FTA Act of 1964, as amended, and;

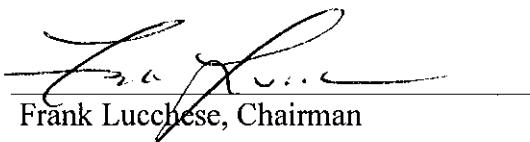
WHEREAS, the Michiana Area Council of Governments (MACOG) being the duly designated Metropolitan Planning Organization for the South Bend and Elkhart/Goshen Urbanized Areas, in cooperation with local governmental units and implementing agencies within the urbanized areas, administers transit programs in Elkhart and Goshen, and;

WHEREAS, the Federal Transit Administration requires that the Michiana Area Council of Governments develop an updated Disadvantaged Business Enterprise (DBE) Program in conjunction with FTA-assisted procurements;

BE IT THEREFORE RESOLVED, by the Michiana Area Council of Governments that the Disadvantaged Business Enterprise (DBE) Program is approved.

RESOLVED THIS 13<sup>th</sup> day of July, 2011.

Michiana Area Council of Governments



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Frank Lucchese, Chairman

## **MACOG DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

This program is based on 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs.

### **Definitions of Terms**

The terms used in this program have the meanings defined in 49 CFR 26.5. and are available at [www.fta.dot.gov](http://www.fta.dot.gov) under the Civil Rights & Accessibility menu and the submenu : Disadvantaged Business Enterprise, Subpart A – General, Section 26.5.

### **Objectives/Policy Statement (26.1, 26.23)**

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

It is the policy of the MACOG to ensure that DBE's, 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 DBE's 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 DBE's; and
5. To help remove barriers to the participation of DBE's in DOT assisted contracts.

A MACOG Transit Manager with direct access to the Executive Director has been designated as the DBE Liaison Officer. In that capacity, the DBE Liaison Officer 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 MACOG in its financial assistance agreements with the Department of Transportation.

The MACOG has disseminated this policy statement to the Policy Board and it will be distributed to the DOT. A statement and description of the DBE Program will be included in the MACOGgazette, a quarterly newsletter, to notify other interested parties. MACOG will also work with local transit agencies, chambers of commerce, the minority development business councils, and INDOT to assist in distribution of this policy.

## **MACOG DISADVANTAGED BUSINESS ENTERPRISE PROGRAM (2011 Draft Policy)**

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## **Nondiscrimination (26.7)**

The MACOG 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 MACOG 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)**

The MACOG 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.

## **Quotas (26.43)**

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

## **DBE Liaison Officer (DBELO) (26.45)**

A MACOG Transit Manager is designated as the DBE Liaison Officer who can be reached at MACOG, 227 West Jefferson Blvd., Room 1120, South Bend, IN 46601, (574) 287-1829 or at [macogdir@macog.com](mailto:macogdir@macog.com). In that capacity, the DBE Liaison Officer (DBELO) is responsible for implementing all aspects of the DBE program and ensuring the MACOG complies with all provisions of 49 CFR Part 26. The DBE Liaison Officer has direct, independent access to the Executive Director of the MACOG concerning DBE program matters. The size of the MACOG staff and transit programs administered by the MACOG means that the DBELO does not require other personnel to complete work on DBE issues. An organization chart displaying the DBELO's position in the organization is found in Attachment A to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other MACOG transit staff. 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 all staff to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBE's.
5. All procurement activities are considered during DBE goal setting and results are monitored each quarter.
6. Participates in pre-bid meetings.

7. Consults with the Executive Director on DBE matters and achievement.
8. Relies on Uniform Certification Process in Indiana, done by the Department of Administration.
9. Reviews the Indiana listing of certified DBE firms on the Indiana Department of Administration website on a quarterly basis.
10. The Executive Director of the MACOG is responsible to oversee the DBELO efforts.

### **Federal Financial Assistance Agreement Assurance (26.13)**

The MACOG has signed the following assurance, applicable to all DOT assisted contracts and their administration:

The MACOG 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 MACOG 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 MACOG 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 (312 U.S.C 3801 et seq.).

### **DBE Financial Institutions**

It is the policy of the MACOG 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.

Information on the availability of such institutions can be obtained Indiana Department of Administration website. (26.25)

### **Required Contract Clauses (26.13, 26.29)**

#### Contract Assurance

The MACOG will ensure that the following clause is placed in every DOT-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 MACOG 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 contractor receives from the MACOG. The prime contractor agrees further to return retainage payments to each subcontractor within 30 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 MACOG. This clause applies to both DBE and non-DBE subcontractors.

#### **Monitoring and Enforcement Mechanisms (26.37)**

The MACOG 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. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

#### **Overall Goals (26.45)**

The MACOG's overall 3-Year goal for FY 2010-2011 is the following: 8.0% of the Federal financial assistance we will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles; 6.0% in 2011-2012, and 6.0% in 2012-2013.

#### **Method**

The following is a summary of the method used to calculate this goal:

1. The method used to determine the number of ready and willing DBE contractors (base figure) for "Step 1" of the process (see 26.45) was determined using the IDOA current listing of certified DBE firms, and the U.S. Department of Commerce, Minority Business Development Agency Publication, "The State of Minority Business: Indiana," This document is based on the 2002 Economic Census. NAICS group codes were used to further classify the DBE firms. MACOG also contacted the Chamber of Commerce of St. Joseph County and the Greater Elkhart County Chamber of Commerce, the Goshen Chamber of Commerce, and the regional Small Business Development located in South Bend, for assistance.

The MACOG will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

The MACOG 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.

Report to DOT

The MACOG reports DBE participation to DOT on a semi-annual basis for Federal Transit Administration (FTA) grants and on a monthly basis for ARRA grants.

Confidentiality

The MACOG 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 DOT) without the written consent of the submitter.

**Adopted by the MACOG Policy Board**

**DATE** July 13, 2011

# MACOG Transit Organizational Chart

