

**COMMUNITY CONNECTOR DBE PROGRAM  
POLICY STATEMENT**

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

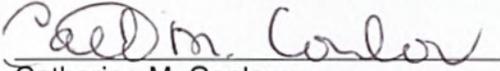
Community Connector has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. Community Connector has received Federal financial assistance from the Department of Transportation, and as a condition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

It is the policy of Community Connector to ensure that DBEs, 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 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 market place outside the DBE Program.

Community Connector's Bus Superintendent has been delegated as the DBE Liaison Officer. In that capacity, the Bus Superintendent 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 Community Connector in its financial assistance agreements with the Department of Transportation.

Community Connector will disseminate this policy statement to the Bangor City Council and all of the components of our organization. We will distribute this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts via the Bangor Daily News.

  
Catherine M. Conlow  
City Manager

9-18-14  
Date

## **SUBPART A – GENERAL REQUIREMENTS**

### **Objectives** (26.1, 26.23)

The objectives are found in the policy statement on the first page of this program.

### **Applicability** (26.3)

Community Connector 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 the Teas-21, Pub. L. 105-178.

### **Definitions** (26.5)

Community Connector adopts and includes the definitions contained in Section 26.5 for this program. Any new or amended definitions shall be added and included as provided by USDOT.

*Affiliation* has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

*Alaska Native* means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

*Alaska Native Corporation* (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq. ).

*Compliance* means that a recipient has correctly implemented the requirements of 49 CFR Part 26.

*Contract* means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

*Contractor* means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

*Department* or *DOT* means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

*Disadvantaged business enterprise* or *DBE* means a for-profit small business concern—

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

*DOT-assisted contract* means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

*DOT/SBA Memorandum of Understanding* or *MOU*, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

*Good faith efforts* means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

*Home state* means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

*Immediate family member* means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

*Indian tribe* means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

*Joint venture* means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

*Native Hawaiian* means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

*Native Hawaiian Organization* means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

*Noncompliance* means that a recipient has not correctly implemented the requirements of this part.

*Operating Administration* or *OA* means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The “Administrator” of an operating administration includes his or her designees.

*Personal net worth* means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

*Primary industry classification* means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, 1997 which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

*Primary recipient* means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

*Principal place of business* means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

*Program* means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

*Race-conscious measure* or *program* is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

*Race-neutral measure* or *program* is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

*Recipient* is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

*Secretary* means the Secretary of Transportation or his/her designee.

*Set-aside* means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

*Small Business Administration* or *SBA* means the United States Small Business Administration.

*SBA certified firm* refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

*Small business concern* means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business

Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

*Socially and economically disadvantaged individual* means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;

(ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

*Tribally-owned concern* means any concern at least 51 percent owned by an Indian tribe as defined in this section.

*You* refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

### **Non-discrimination Requirements (26.7)**

Community Connector 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, Community Connector 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 (26.11)**

### **Uniform Report of DBE Awards or Commitments and Payments: (26.11(a))**

Community Connector will report DBE participation to the Federal Transit Administration (FTA) using the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to the DBE regulation.

### **Bidders List: (26.11(c))**

The City of Bangor will utilize MaineDOT's DBE list when it solicits bids on behalf of Community Connector for DOT-assisted contracts, or will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidders list will include the name, address, DBE or non-DBE status, age, and annual gross receipts of firms.

We will collect this information in the following ways:

- Require bidders by contract to report the names and addresses and status of all firms who quote to them on subcontracts.
- A notice in all solicitations, requesting firms quoting on subcontracts to report information directly to Community Connector.

We will require prime contracts 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 Community Connector or DOT. This reporting requirement will also extend to any certified DBE subcontractor.

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

Community Connector 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.

## **Assurances (26.13)**

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

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

Community Connector 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. Community Connector shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. Community Connector'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 Community Connector 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.*).

This language will appear in financial assistance agreements with sub-recipients.

**Contract Assurance:** (26.13b)

We 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.

**SUBPART B - ADMINISTRATIVE REQUIREMENTS**

**DBE Program Updates** (26.21)

Since Community Connector has received a grant of \$250,000 or more in FTA planning capital and/or operating assistance in a federal fiscal year, we 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.

**DBE Liaison Officer (DBELO)** (26.25)

We have designated the following individual as our DBE Liaison Officer:

Laurie Linscott  
Bus Superintendent  
Community Connector  
481 Maine Ave  
Bangor, Maine 04401  
207-992-4672  
laurie.linscott@bangormaine.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that Community Connector complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the City Manager concerning DBE program matters. 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 appropriate officials. The DBELO has no subordinate staff to assist in the administration of the program, but can seek assistance from other City of Bangor staff members as necessary. The duties and responsibilities include the following as necessary:

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 to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.

5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment) and identifies ways to improve progress.
6. Analyzes Community Connector's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the City Manager and City Council on DBE matters and achievement.
9. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Provides outreach to DBEs and community organizations to advise them of opportunities.

### **DBE Financial Institutions (26.27)**

It is the policy of Community Connector 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 contract to make use of these institutions. We have made the following efforts to identify and use such institutions: we have consulted MaineDOT's DBE Program and have determined that there are no such institutions identified by the State of Maine in Community Connector's service area. We will re-evaluate the availability of DBE financial institutions every three years.

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

### **Prompt Payment Mechanisms (26.29)**

#### Prompt Payment (26.29(a))

Community Connector 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 thirty calendar days from the receipt of each payment the prime contract receives from Community Connector. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of Community Connector. This clause applies to both DBE and non-DBE subcontracts.

#### Retainage (26.29(b))

The prime contractor agrees to return retainage payments to each subcontractor within thirty 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 Community Connector. This clause applies to both DBE and non-DBE subcontracts.

#### Monitoring and Enforcement (26.29(d))

Community Connector will periodically audit contractors and subcontractors to monitor and enforce that prompt payment and return of retainage is in fact occurring.

### **Directory (26.31)**

Community Connector utilizes the DBE directory maintained and provided by the State of Maine. The Directory can be found at:

<http://www.maine.gov/mdot/civilrights/documents/WeeklyDBEVendorList.pdf>.

### **Overconcentration (26.33)**

Community Connector has not identified that overconcentration exists in the types of work that DBEs perform.

We will reevaluate for overconcentration every three years.

### **Business Development Programs (26.35)**

Community Connector has not established a business development program. We will re-evaluate the need for such a program every three years.

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

Community Connector 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. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award or subsequently is actually performed by the DBEs. Community Connector shall, where necessary, review contract records and monitor work sites to verify the work is actually performed. Written certification of such review and monitoring shall be completed for each contract or project in which DBEs participate.
4. We will keep a running tally of actual DBE attainments, such as payments actually made to DBE firms, for work committed to them at the time of contract award or subsequently. These attainments shall be compared to commitments, and both shall be displayed in reports of DBE participation to the Department.

### **Small Business Participation (26.39)**

Community Connector has incorporated the following non-discriminatory elements to its DBE program, in order to facilitate competition on DOT-assisted public works projects by small business concerns (both DBEs and non-DBE small businesses):

1. Removal of unnecessary and unjustified bundling of contract requirements;
2. Requiring bidders on large contracts to identify and/or provide specific subcontracts appropriate for small business participation; and
3. Letting prime contracts of a size that small businesses can reasonably compete for and perform.

Small businesses shall be considered any business with less than \$22.41 million in average annual gross receipts. Any business wishing to be considered a small business for purposes of this section must submit an affidavit saying they do not exceed this size limit under penalty of perjury.

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Set-asides or Quotas (26.43)**

Community Connector does not use quotas in any way in the administration of this DBE program.

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

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program. This section of the program will be updated every three years.

In accordance with Section 26.45, Community Connector will normally submit its triennial overall DBE goal to FTA August 1 of the year specified by FTA.

Community Connector will also request use of project-specific DBE goals as appropriate, and/or will establish project-specific goals as directed by FTA.

The process generally used by Community Connector to establish overall DBE goals is described in Attachment 4 to this Program.

Before establishing the triennial overall goal, Community Connector will consult with the groups identified in Attachment 8 and any similar groups identified by Community Connector to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and Community Connector'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 goals, informing 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, and informing the public that Community Connector and DOT will accept comments on the goals for 45 days from the date of the notice. This notice will be published in the Bangor Daily News. Normally, we will issue this notice by June 1 of each year. The notice shall include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include: the goal (including the breakout of estimated race-neutral and race-conscious participation, as appropriate); a copy of the methodology, worksheets, etc., used to develop the goal; a summary of information and comments received during this public participation process and our responses; and proof of publication of the goal in media outlets listed above.

We will normally begin using our overall goal on October 1 of the specified year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project. Our goal will remain effective for the duration of the three-year period established and approved by FTA.

### **Goal Setting and Accountability (26.47)**

If the awards and commitments shown on Community Connector's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall applicable to that fiscal year, we will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments;
2. Establish specific steps and milestones to correct the problems identified in the analysis; and
3. Retain analysis and corrective actions in our records for three years.

#### **Transit Vehicle Manufacturers Goals (26.49)**

Community Connector 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, Community Connector may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

#### **Meeting Overall Goals/Contract Goals (26.51)**

Community Connector will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, Community Connector will rely on its customary competitive procurement procedures which may include a DBE contract goal without reference to race. Community Connector will also ensure inclusion of DBEs on recipient mailing lists or other methods for providing notice to bidders.

Community Connector will use contract goals to meet any portion of the overall goal Community Connector 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 DOT-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.)

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

#### **Good Faith Efforts Procedures (26.53)**

##### **Award of Contracts with a DBE Contract Goal (26.53(a))**

In those instances where a contract-specific DBE goal is included in a procurement/solicitation, Community Connector will not award the contract to a bidder who does not either: (1) meet the contract goal with verified, countable DBE participation; or (2) documents it has made good faith efforts to meet the DBE contract goal, even though it was unable to do so. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

##### **Evaluation of Good Faith Efforts (26.53(a) & (c))**

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive: the Bus Superintendent.

The process used to determine whether good faith efforts have been made by a bidder are as follows: the bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts such as those found in Appendix A to Part 26.

We will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror.

**Information to be submitted (26.53(b))**

Community Connector 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/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 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 (26.53(d))**

Within 30 calendar days of being informed by Community Connector that it is not responsive 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:

City Manager  
City Hall  
73 Harlow Street  
Bangor, Maine 04401  
207-992-4200

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. 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 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 (26.53(f))**

Community Connector will require that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without Community Connector's prior written consent. Prior written consent will only be provided where there is "good cause" for termination of the DBE firm, as established in Section 26.53(f)(3) of the DBE regulation.

Before transmitting to Community Connector its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to Community Connector prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise Community Connector of why it objects to the proposed termination. The five day period may be reduced by Community Connector if the matter is one of safety or other public necessity.

In those instances where "good cause" exists to terminate a DBE's contract, Community Connector will require the prime 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 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.

#### **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 Community Connector to practice nondiscrimination 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, as defined in Appendix A, 49 CFR Part 26 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 (6) if the contract goal is not met, evidence of good faith efforts.

### **Counting DBE Participation (26.55)**

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

## **SUBPART D – CERTIFICATION STANDARDS**

### **Certification Process (26.61-26.73)**

Community Connector will rely on State of Maine certification procedures. These procedures are available from the Maine Department of Transportation, 16 State House Station, Augusta, Maine 04333. MaineDOT uses the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Unified Certification Programs (26.81)**

Community Connector works closely with MaineDOT which is the certifying agency for all USDOT recipients in Maine for the DBE program, which was approved by USDOT in 2000. MaineDOT requires that all recipients sign the UCP Agreements in order to participate in USDOT assisted programs. MaineDOT has a list of all participating recipients and has signed copies of agreements on file at MaineDOT.

### **Procedures for Certification Decisions (26.83 – 26.91)**

Community Connector relies on MaineDOT for certification decisions regarding DBEs. MaineDOT's DBE program states that ...”to be certified as a DBE, and for currently certified firms to remain in good status, a firm and the majority owner must meet all eligibility requirements including furnishing the Personal Financial Statement. Certification and renewal decisions are based on the facts as a whole. As such, the burden of proof for all applicants and those seeking renewal must furnish all evidence required under 49 CFR Part 26. For information about the certification process or to request an application (See Attachment F) contact MaineDOT's Civil Rights Office, at (207) 624-3066 or go to MaineDOT webpage at <http://www.maine.gov/disadvantaged-business-enterprises/dbe-home.php>.”

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

U.S. Department of Transportation  
Office of Civil Rights Certification Appeals Branch  
1200 New Jersey Ave. SE  
West Building, 7th Floor  
Washington, D.C. 20590

Community Connector will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting.

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Information, Confidentiality, Cooperation (26.109)**

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.

Community Connector relies on MaineDOT for information, confidentiality and cooperation. MaineDOT's DBE program states that "MaineDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal law and the Maine Freedom of Information Act, 5 M.R.S. § 791:

*Records and correspondence utilized by state agencies in the certification of minority business enterprises, women's business enterprises and disadvantaged business enterprises which pertain to the applicant's financial or tax status, to private contracts made by the applicant, to the applicant's trade secrets or to any other matter customarily regarded as confidential business information shall be confidential and shall not be open for public inspection.*

*Nothing in this section prevents the disclosure of any records, correspondence or other materials to authorized officers and employees of the State Government and Federal Government.*

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.

#### Monitoring Payments to DBEs

Community Connector relies on MaineDOT for monitoring payments to DBEs. MaineDOT's DBE program states that "MaineDOT 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 the MaineDOT or USDOT. This reporting requirement also extends to any certified DBE subcontractor."

"MaineDOT 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."

#### **ATTACHMENTS**

- Attachment 1: Organizational Chart
- Attachment 2: DBE Directory
- Attachment 3: Monitoring and Enforcement Mechanisms/Legal Remedies
- Attachment 4: Overall Goal Calculation and Methodology
- Attachment 5: Good Faith Efforts Forms
- Attachment 6: Certification Forms
- Attachment 7: DBE Regulation, 49 CFR Part 26
- Attachment 8: Community Consultation

**ATTACHMENT I**

Organizational Chart

City Council

City Manager

Assistant City Manager

Bus Superintendant (DBE Liaison Officer)

## ATTACHMENT 2

DBE Directory

<http://www.maine.gov/mdot/civilrights/documents/WeeklyDBEVendorList.pdf>

## ATTACHMENT 3

### Monitoring and Enforcement Mechanisms/Legal Remedies

The Community Connector has available several mechanisms to monitor for compliance with the DBE requirements contained in its contracts, including, but not limited to, the following:

1. We shall, where necessary, review contract records and monitor work sites to verify the work is actually performed by the DBEs. Written certification of such review and monitoring shall be completed for each contract or project in which DBEs participate.
2. We will keep a running tally of actual DBE attainments, such as payments actually made to DBE firms, for work committed to them at the time of contract award or subsequently. These attainments shall be compared to commitments, and both shall be displayed in reports of DBE participation to the Department.

The Community Connector has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. 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 provided in 26.109, including but not limited to:
  - a. Referral to the Department of Justice for criminal prosecution;
  - b. Referral to the DOT Inspector General;
  - c. Action under suspension and debarment or Program Fraud and Civil Penalties rules;
3. Perform responsibility determinations for future contracts.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem, including, but not limited to, the following:

1. Suspension or debarment proceedings pursuant to 49 CFR part 26
2. Enforcement action pursuant to 49 CFR part 31
3. Prosecution pursuant to 18 USC 1001.

**ATTACHMENT 4**

Overall Goal Calculation and Methodology

[Click here to see DBE Goals](#)

**ATTACHMENT 5**

Forms 1 & 2 for Demonstration of Good Faith Efforts

**FORM I: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

\_\_\_\_\_ The bidder/offeror is committed to a minimum of \_\_\_% DBE utilization on this contract.

\_\_\_\_\_ The bidder/offeror (if unable to meet the DBE goal of \_\_\_%) is committed to a minimum of \_\_\_% DBE utilization on this contract a submits documentation demonstrating good faith efforts.

Name of bidder/offeror's firm: \_\_\_\_\_

State Registration No. \_\_\_\_\_

By \_\_\_\_\_  
Signature Title Date

FORM 2: LETTER OF INTENT

Name of bidder/offeror's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

The bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$\_\_\_\_\_.

**Affirmation**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By \_\_\_\_\_  
Signature Title Date

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.**

(Submit this page for each DBE subcontractor.)

**ATTACHMENT 6**

Certification Forms

<http://www.maine.gov/mdot/civilrights/documents/pdf/UniformCertificationApplication.pdf>

**ATTACHMENT 7**

Regulations: 49 CFR Part 26

[Click here for PDF](#)

## **ATTACHMENT 8**

### DBE Goal - Community Consultation

Maine PTAC

MDOT Civil Rights

Greater Bangor Area Branch, NEAC, NAACP

Maine Centers for Women, Work & Communities

Association of General Contractors

Women Unlimited

WTS-Maine

Four Directions