

## **NOTICE OF PROPOSED GUIDANCE DOCUMENT**

### **DTIM BTLRRH 39**

Pursuant to Wis. Stat. s. 227.112, the Wisconsin Department of Transportation is hereby seeking comment on DTIM BTLRRH 39, FTA 49 CFR Part 26, a proposed guidance document.

### **PUBLIC COMMENTS AND DEADLINE FOR SUBMISSION**

Comments may be submitted to the Wisconsin Department of Transportation for 21 days by:

1. Department's website: <https://appengine.egov.com/apps/wi/dot/guidance-docs?guidDocId=DTIMBTLRRH39>

2. Mailing written comments to:

Division of Transportation Investment Management  
Wisconsin Department of Transportation  
4822 Madison Yards Way  
PO Box 7913  
Madison, WI 53707- 7913

### **WEBSITE LOCATION OF FINAL GUIDANCE DOCUMENT**

The final version of this guidance document will be posted at [wisconsindot.gov](http://wisconsindot.gov) to allow for ongoing comment.

### **AGENCY CONTACT**

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## State of Wisconsin Department of Transportation

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# DBE compliance for transit

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Disadvantaged Business Enterprise (DBE) provisions apply to United States Department of Transportation (USDOT) assisted contracts for airports, highways and transit. This includes the use of Federal Transit Administration (FTA) planning, capital, and/or operating funds spent on contracts. The FTA requires organizations receiving these federal funds to make efforts to purchase from, or use, DBE firms. A DBE is a for-profit small business that is:

- At least 51% owned by one or more individuals who are socially or economically disadvantaged or, in the case of a corporation, in which 51% of the stock is owned by one or more such individuals.
- Controlled (management and daily business operations) by one or more of the socially and economically disadvantaged individuals who own it.

As a recipient of these FTA funds, the Wisconsin Department of Transportation (WisDOT) has a DBE

program that addresses FTA funded contracting activities conducted by WisDOT, as well as those of its grant subrecipients.

## Policy statement

The objectives of the DBE program are, in part, to:

- Ensure nondiscrimination in the award and administration of USDOT-assisted contracts
- Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts
- Help remove barriers to the participation of DBEs in USDOT-assisted contracts

This is reflected in the [policy adopted by WisDOT](#).

When entering into grant agreements for FTA assistance, WisDOT and its subrecipients agree to adhere to the DBE requirements (49 CFR Part 26). This is a condition of receiving the federal financial assistance and is assured to in writing. In addition, the requirements apply at the contract level. This means each contract signed with a contractor and each subcontract a prime contractor signs with a subcontractor must include DBE language which states:

The contractor, subrecipient, 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 USDOT-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.

## DBE goal for transit

The establishment of a DBE participation goal is another requirement of the DBE regulation. A three-year goal for transit has been established for 2017-2019 based on its own anticipated contracting opportunities and those of its grant subrecipients. The goal is developed, in part, by using the information provided in the DBE reports submitted to WisDOT by grant subrecipients.

WisDOT has established an overall goal of 1.10% for DBE participation in FTA assisted contracts and will strive to achieve the goal through race neutral means. Progress toward achievement of the goal will be monitored throughout the year with quarterly reporting required of subrecipients. In some instances, a separate contract goal may be established to assist in attaining the overall goal. This may include a contract specific goal for a subrecipient project. If a contract specific goal is set, additional monitoring and reporting on the performance of the contract will apply.

## Procurement process

The DBE requirements include provisions that must be addressed in the procurement process. These provisions include required contract clauses, contract goal-setting, and required information from bidders. The required contract clauses address non-discrimination, Transit Vehicle Manufacturer (TVM) certification, termination, and remedies for prime contractors that do not comply. Prompt payment by prime contractors to their subcontractors is also required, including the return of retainage. While separate contract goals are not required on each contract, if a contract specific goal is established, additional information must be collected from bidders prior to contract award.

## Reporting

On a quarterly basis, WisDOT will work with subrecipients of federal transit funding to report contracting activities (items/services purchased) that use FTA funding for construction/facility projects. Examples of contracting activities include consulting, materials, supplies and services. Quarterly reports are due on the 15th of the month following the end of the reporting quarter. Subrecipients with contract specific DBE goals will also be required to report on contracting

activities.

- [Quarterly Report on FTA Funded Purchases \(DT1788\)](#)

1st Quarter – January 1 to March 31 (due April 15)

2nd Quarter – April 1 to June 30 (due July 15)

3rd Quarter – July 1 to September 30 (due October 15)

4th Quarter – October 1 to December 31 (due January 15)

## State program

WisDOT is committed to a Civil Rights Program for the participation of [Disadvantaged Business Enterprises](#).

- [List of certified DBEs](#)

## Resources

- [FTA DBE regulations, guidance and procedures](#)
- [Procurement Training](#) (WisDOT presentation)
- [DBE Requirements: Yes, They Apply To You!](#) (WisDOT presentation)
- [New DBE Requirements: Wait, There's More?](#) (WisDOT presentation)

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