



MARC

MID-AMERICA REGIONAL COUNCIL

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM 2022 to 2024

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Policy Statement (§26.1, §26.23)

It is the policy of the Mid-America Regional Council (MARC) to encourage all qualified businesses to actively participate in the procurement of all MARC sponsored contracts. MARC does not discriminate based on race, color, sex, national origin, age, military status, or disability.

MARC has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR, part 26. MARC receives federal financial assistance from the USDOT, and as a condition of receiving this assistance, MARC has signed an assurance that it will comply with 49 CFR, part 26.

It is the policy of MARC to ensure that all businesses have an equal opportunity to receive and participate in USDOT assisted contracts. It is also MARC's policy:

1. To ensure nondiscrimination in the award and administration of USDOT assisted contracts;
2. To create a level playing field on which DBEs and small businesses can compete fairly for USDOT 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 and small businesses in USDOT assisted contracts; and
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

MARC has designated Darryl Fields, Principal Planner, as the DBE Liaison Officer (DBELO). In that capacity, the DBELO is responsible for implementing all aspects of the DBE program. Other MARC staff will assist the DBELO, as needed, with DBE requirements and compliance. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by MARC in its financial assistance agreements with the USDOT.

MARC has disseminated this policy statement to MARC's Board of Directors and all components of our organization. MARC has published and distributed notice of this document and the DBE goal in general circulation publications and on the MARC website.



David A. Warm
Executive Director

Date: June 15, 2021

(1) Objectives (§26.1, §26.23)

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

(2) Applicability (§26.3)

MARC 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 and Fixing America's Surface Transportation Act (Fast Act) Public Law 114- 94, 129 STAT. 1312.

MARC is the recipient of federal transit funds authorized by Titles III, V, VI of ISTEA, Pub. and I L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the TEA-21, Pub. L. 105-178.

(3) Definitions of Terms (§26.5)

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

(4) Non-discrimination Requirements (§26.7)

MARC 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, MARC will not, directly or through contractual or other arrangements, use criteria or methods of administration that have an 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.

(5) Record Keeping Requirement (§26.11)

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

MARC will report DBE participation to the relevant operating administration (FAA, FHWA and/or 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)

MARC will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on USDOT assisted contracts. The purpose of this requirement is to allow the use of a bidder's list approach to aid in calculating future overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms.

MARC will collect this information in the following ways:

- MARC will require all prime submitters on MARC sponsored projects to report the names, addresses, phone numbers, and DBE/non-DBE status who quote to them for subcontracting status.

Monitoring Payments to DBEs

MARC 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 MARC or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

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

MARC 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.

Reporting to USDOT

MARC will report DBE participation to USDOT as follows:

- MARC will annually submit USDOT Form 4630 or as amended.
- MARC will report DBE participation to FTA and FHWA semiannually on May 1 and Dec. 1 and report to FAA annually on Dec. 1 using USDOT Form 4630 or an appropriate USDOT funding agency (if required by funding agency). These reports will reflect payments actually made to DBEs on USDOT assisted contracts.

(6) Federal Financial Assistance Agreement Assurance (§26.13)

MARC has signed the following assurance, applicable to all USDOT assisted contracts and their administration:

a) Federal Financial Assistance Agreement Assurance 26,13(a)

MARC shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR, part 26. MARC shall take all necessary and reasonable steps under 49 CFR, part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. MARC's DBE Program, as required by 49 CFR, part 26 and as approved by USDOT, 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 MARC 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

(7) Required Contract Clauses (§26.13(b))

Contract Assurance 26.13(b)

MARC will ensure that the following clause is 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 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 MARC deems appropriate.”

(8) DBE Program Updates (§26.21)

Since MARC has received a grant of \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year; MARC will continue to carry out this program until all funds from USDOT financial assistance have been expended. MARC will provide to USDOT updates representing significant changes in the program.

(9) DBE Liaison Officer (DBELO) (§26.25)

MARC has designated the following individual as its DBE Liaison Officer (DBELO):

Darryl Fields
Mid-America Regional Council
600 Broadway; Suite 200
Kansas City, MO 64105 – 1554
(816) 474-4240
dbe@marc.org

In this capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that MARC complies with all provisions of 49 CFR, part 26. The DBELO has direct, independent access to MARC’s Executive Director concerning DBE program matters. One other employee who will devote a portion of his or her time to the program will assist the DBELO in administering the DBE Program. An organizational chart displaying the DBELO’s position in the organization is found in Attachment 1 to this program.

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

1. Gathers and reports statistical data and other information as required by USDOT.
2. Reviews third party contracts utilizing Federal USDOT funds for compliance with this program.

3. Works with all departments using Federal USDOT funds to set overall annual goal.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes MARC's progress toward goal attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the executive director/MARC's Board of Directors on DBE matters and achievements.
9. Participates with the legal counsel and project director to determine contractor compliance with "good faith efforts."
10. Provides DBEs with information and assistance in preparing bids.
11. Attends national and state DBE training seminars.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Reviews directories of certified DBEs compiled by local agencies.

(10) DBE Financial Institutions (§26.27)

It is the policy of MARC to investigate and re-evaluate every three (3) years to 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. MARC has made the following efforts to identify such institutions: data search among minority and women associated business organizations, chambers of commerce, regional business journals, and the Federal Reserve data base of "Minority-Owned Banks. To date MARC has identified the following institutions:

- Liberty Bank and Trust, Kansas City, KS and MO.
- Central Bank of Kansas City, MO

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

(11) Prompt Payment and Retainage Mechanism (§26.29 (a)(b)(d))

MARC will include the following clause in each USDOT assisted prime contract (§26.29 (a)(b)):

"The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than 14 days from the receipt of each payment the prime contractor receives from MARC. The prime contractor agrees further to return retainage payments to each subcontractor within 14 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 MARC. This clause applies to both DBE and non-DBE subcontractors."

Monitoring and Enforcement §26.29 (d):

The following language is included in each DOT-assisted prime contract and applies to both DBE and non-DBE subcontractors.

The Contractor shall certify on each payment request to MARC that payment has been or will be made to all subcontractors. Lien waivers may be required for the Contractor and its subcontractors. The Contractor shall notify MARC on or before each payment request, of any situation in which scheduled subcontractor payments have not been made.

If a subcontractor alleges that the Contractor has failed to comply with this provision, the Contractor agrees to support any MARC investigation, and if deemed appropriate by MARC, to consent to remedial measures to ensure that subcontractors are properly paid as set forth herein.

The participation of the DBE subcontractor or supplier will not be credited toward the Prime Contractor's DBE achievement unless and until the amount being counted toward the goal has been paid to the DBE.

If the Contractor fails to comply in the time specified MARC will issue an order stopping all payments until satisfactory action has been taken.

(12) Directory (§26.31)

MARC uses the DBE directories published by the following agencies to identify firms recognized as eligible to participate as DBEs:

<i>Agency</i>	<i>Internet Address</i>
➤ Kansas Department of Transportation (KDOT)	https://kdotapp.ksdot.org/dbecontractorlist/
➤ Missouri Regional Certification Committee's (MRCC) central data base.	http://www.modot.mo.gov/business/contractor_resources/External_Civil_Rights/mrcc.htm

The individual directories are available at the listed Internet addresses.

Based upon these directories, MARC was able to determine the relative availability of DBEs in the area, as described in *Section 17 Overall Goals*.

(13) Over-concentration (§26.33)

MARC has not identified any areas of over-concentration. MARC will continue to monitor DBE participation and usage and will take appropriate actions to address any identified over-concentrations.

(14) Business Development Programs (§26.35)

MARC will not have a business development or mentor/protégé program MARC will reevaluate the need for a program every three (3) years.

(15) Monitoring and Enforcement Mechanisms (§26.37)

MARC will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. One of the key requirements of the DBE program is that a “commercially useful function” be performed. This is defined as:

“Responsible for execution of a contract or a distinct element of the work by actually performing, managing, and supervising the work involved.”

MARC’s DBELO, project administrator and/or project manager will monitor the performance of work to be performed by DBE firms on all USDOT assisted projects. MARC will review all elements of the work to be performed including supervision of employees, employee payroll, and equipment (if applicable) used by the DBE firm. Contractors, DBE, and all employees are required to cooperate with MARC or its designate conducting investigations.

Failure of a DBE firm to perform a commercially useful function will result in the dollar amount of the work not being credited toward the sub-recipient's or prime contractor's DBE goal on the project. This can result in MARC withholding payment from the prime contractor or agency for that amount or could result in removal of the DBE. In cases of deliberate attempts to circumvent the intent of the DBE program, or fraud, these actions may lead to criminal prosecution of both the prime contractor and the DBE firm.

Situations that may trigger investigations include, but are not limited to, shared employees, supervision of DBE employees by another contractor, or an item of work being done jointly by the DBE firm and another contractor.

The DBE must manage the work that has been contracted. Management includes, but is not limited to, scheduling work operations, preparing and submitting certified payrolls, and hiring and firing employees. All work must be performed with a workforce the DBE firm controls, with a minimum of 30% of the work to be performed by the DBE firm’s regular employees, or those hired by the DBE firm for the project from sources other than the prime contractor.

The DBE owner must supervise daily operation, either personally or with a full time, skilled and knowledgeable manager. The manager must be under the DBE owner's direct supervision. The DBE owner must make all operational and managerial decisions of the firm. Mere performance of administrative duties is not supervision of daily operations.

2. Requests for Proposals (RFP) and Bid Specifications:

Requests for Proposals (RFP) and bid specifications using USDOT assisted funds will include MARC's DBE goal requirement and the requirement that all bidders/respondents, to be considered as responsive, must submit with their bids/proposals written assurance that they will meet the proposed DBE goal noted in the bid specification or RFP, and in the Joint Venture Agreement if a DBE is to joint venture on the project. Price alone will not be an acceptable basis for rejecting DBE bids or proposals unless it is determined that no reasonable price can be obtained from a DBE.

3. Bid and RFP Evaluation:

Bid and RFP submittals will be reviewed by the DBELO and the project administrator or manager to evaluate proposals on DBE participation. Reasonableness of price and overall responsiveness of the apparent awardee will be evaluated by an appropriate staff member from the project's originating department and the project's administrator or manager. The apparent awardee is advised of MARC's schedule for an anticipated contract award and the contractor's need, to enclose with each bid and RFP submittal, Forms 1 & 2 for Demonstration of Good Faith Efforts (Attachment 5) for each proposed DBE subcontractor and each joint venture involving a DBE.

4. Fraudulent Acts:

MARC will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in §26.109. MARC also will consider similar action under local and state legal authorities, including responsibility determinations in future contracts.

(16) Fostering Small Business Participation (§26.39)

To facilitate competition by small businesses in projects, funded in-part by USDOT, MARC will unbundle projects as appropriate to help eliminate obstacles to small business participation.

Small Business Definition

MARC uses the Small Business Administration's (SBA) definition and size standards (as it may be amended from time to time) to define a small business:

“... a small business concern is one that is independently owned and operated, is organized for profit, and is not dominant in its field. Depending on the industry, size standard eligibility is based on the average number of employees for the preceding twelve months or on sales volume averaged over a three-year period.”

Set Asides

MARC’s transportation projects historically are of a size and magnitude (range \$25,000 to \$500,000) that already accommodate small business participation. Therefore, MARC will not use small business set asides to facilitate small business participation.

Mega Project

Projects that are multi-year design build or in excess of \$2,000,000 is considered a “mega project”. Bidders on a prime contract of a “mega project” will specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

Implementation

To actively implement the small business program MARC has partnered and collaborated with local, regional and national partners’ initiatives that are encouraging greater collaboration to form strong partnerships with small businesses. MARC and its partners are offering technical assistance and training to those individuals pursuing entrepreneurialism. The objectives of these programs are:

- Develop stronger workforce development systems
- Support startup or expansion of new companies
- Assist entrepreneurs and small businesses with technical assistance and assessments.
- Offer feasibility and technical assistance for small to mid-sized companies
- Increase awareness of transportation related work opportunities in the Kansas City region.
- Strengthen and develop community college programs to support small business needs
- Provide support to disadvantaged workers to access job training.

MARC will:

1. Encourage prime contractors to subcontract portions of work normally done by their own forces when subcontractors submit a lower quote.
2. Provide assistance in overcoming limitations that impede participation in the industry, such as inability to obtain bonding, financing, etc. by providing information on available resources through MARC outreach activities and communications, along with various trainings and workshops.
3. Circulate upcoming contracting opportunities, training classes in business management, etc.
4. Continue community outreach, such as MARC’s Workforce Development Initiative, to foster small business development through business development workshops and training. This is accomplished through other applicable MARC initiatives and regional partners.

(17) Quotas (§26.43)

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

(18) Overall Goals (§26.45)

Amount of goal

In accordance with §26.45, MARC will submit its triennial overall DBE goal to FTA on Oct, 1 of the year specified by FTA. MARC will also request use of project- specific DBE goals as appropriate, and/or will establish project-specific DBE goals as directed by FTA and/or FAA.

MARC has established an overall goal of 22 percent¹ for DBE participation in USDOT assisted contracts. The goal is based upon evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and available to participate on USDOT assisted contracts. The goal reflects the level of DBE participation anticipated, absent the effects of discrimination. To calculate the MARC DBE goal, the base figure calculation was measured by the volume of work DBEs performed in recent years thus utilizing the average of the two measures.

Method (Attachment 4)

In accordance with §26.45, MARC has employed a two–step process to calculate its DBE program goal. Step 1 involves determining a “base figure” for the relative availability of DBEs in the area. The base figure is a percentage calculated as the ratio of available and potentially eligible DBEs to all available firms.

- The data sources used to derive available DBEs and “all available” firms were as follows:
 1. “Available DBEs” is derived from the total number of certified DBEs in the KDOT and MRCC, DBE directories with the North American Industry Classification (NAICS) of 541820, 541320 and 541330 or whose work type was listed as website development, public relations, landscape architecture and architecture and engineering for the nine (9) counties within the Metropolitan Statistical Area (MSA). The 2022 DBE program limited the search to these fields based on the types of contracts anticipated for the upcoming year.
 2. “All available” firms is derived from the total number of firms with the NAICS of 541820, 541320 and 541330 found in Census Bureau’s County Business Patterns (CBP) database in the nine (9) counties within the MSA.

¹ MARC’s Goal is set for a 3-year period, starting federal fiscal year 2022 unless otherwise directed by FTA, and/or FAA, FHWA

3. “Potentially eligible” DBEs were determined based upon the CBP and the Kansas City, Missouri’s Disadvantaged/Minority and Women’s Business Enterprise Directory. Listed firms’ functions were evaluated to determine their eligibility to bid for proposed contracts (as listed above), and the resulting list was checked to ensure that no firms listed in the certified DBE list was repeated.

The method identified above resulted in a weighted base percent. Documentation of the process is included in Attachment 4. The **second step** involved examining available evidence to determine what adjustment, if any, was needed to the base figure in order to arrive at the overall goal that reflects as accurately as possible the DBE participation MARC would expect in the absence of discrimination.

To determine what types of adjustments, if any, were needed to the base figure, additional sources of evidence was examined:

1. The current capacity of DBEs to perform work in MARC’s DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years.
2. Reviewed the last three (3) year biannual reports (years 2018 through 2020) of DBE participation (22%) reported to the FTA.
3. To calculate the DBE goal, MARC averaged the base figure calculation (19%) was averaged with the median of the volume of work DBEs performed in recent years (22%) thus providing the average of the two measures.

Reporting Process

MARC submits its overall goal to USDOT on Aug. 1 every 3 years starting 2010.

Before establishing the overall goal, MARC will consult with women, minority, DBE, non-DBE business communities and organizations within the Kansas City region; Kansas and Missouri Departments of Transportation; regional transit authorities; and the city of Kansas City, MO to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and MARC’s efforts to establish a level playing field for the participation of DBEs. Public meetings to address these issues, jointly sponsored by MARC, the Missouri Department of Transportation (MoDOT), Kansas City Area Transit Agency (KCATA) and the City of Kansas City, MO (KCMO) is held each year.

Following this consultation and approval by MARC policy board MARC publishes and distributes a notice of this document and the corresponding DBE goal in general circulation publications and the MARC website. MARC published its goal information for 45 days and notice of a pending public hearing in these publications:

- Kansas City Star
- Kansas City Call (minority-owned)
- Kansas City Hispanic News (minority-owned)
- Dos Mundos (minority-owned)
- Kansas and Missouri American Council of Engineering Companies (ACEC) newsletters

Public inspection of the proposed goal and its rationale are available for inspection during normal business hours at MARC's office for 30 days following the date of the notice. Both MARC and the USDOT agencies (FTA/FHWA/FAA) will accept comments on the goal for 45 days from the date of the notice.

Normally, MARC will issue this notice by July 1 of each year. Comments may be sent to:

DBE Liaison Officer
Mid-America Regional Council 600
Broadway 200 Rivergate Center
Kansas City, MO 64105 – 1554
db@marc.org
or
Civil Rights Officer, Region VII
Federal Transit Administration 901
Locust Street, Room 404 Kansas
City, MO 64106

MARC's overall goal submission to USDOT will include a summary of information and comments received during this public participation process and MARC's responses.

MARC will begin using our overall goal on October 1 of each year unless MARC has received other instructions from USDOT.

(19) Goal Setting and Accountability (\$26.47)

If the awards and commitments shown on MARC'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, MARC will:

1. Analyze in detail the reason for the difference between the overall goal and the actual awards/commitments; and
2. Establish specific steps and milestones to correct the problems identified in the analysis.

This analysis and corrective action plan will be disseminated to MARC personnel and will be available for review by FTA. The DBELO will be responsible for monitoring the action plan.

(20) Transit Vehicle Manufacturers Goals (§26.49)

MARC 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. As applicable MARC reviews FTA’s “List of Transit Vehicle Manufacturers (TVMs) Eligible to Bid on Federally Funded Transit Contracts.”

(21) Process To Meet Overall Goal (§26.51)

MARC will meet the maximum feasible portion of its overall goal using race-neutral means of facilitating DBE participation. In order to do so, MARC will:

- Use contract goals to meet any portion of the overall goal MARC does not project being able to meet its DBE Goal 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 using race-neutral means.
- Establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. MARC 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).
- Express contract goals as a percentage of the total amount of a DOT-assisted contract.

(22) “Good faith Efforts” (§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, MARC will not award the contract to a bidder who does not either:

- (1) meet the contract goal with verified, countable DBE participation; or
- (2) document it has made adequate 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.

Information to be submitted 26.53(b)

- MARC treats bidder/respondent’s 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/respondents 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 participation;
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;
6. If the contract goal is not met, evidence of "good faith efforts."

Demonstration of "good faith efforts" 26.53(c)

The bidder/respondent can demonstrate that it has made "good faith efforts" by either meeting the contract goal or documenting "good faith efforts." MARC will ensure that the information is complete and accurate and will adequately document the bidder's/respondent's "good faith efforts" before committing to the performance of the contract by the bidder/respondent.

"Good faith efforts" include, but are not limited to:

- Verification of advertisement soliciting bids from DBEs for three (3) consecutive days in general circulation, trade, minority, and female-focused media. Such advertisements should begin at least fifteen days prior to bid/proposal submittal date.
- Verification of efforts to provide written notice to a reasonable number of appropriate DBEs listed in the most recent DBE directories of DBE certifying agencies listed below:
 - KDOT
 - Missouri Regional Certification Committee (MRCC)
- Verification of efforts to subcontract, consistent with industry practices, with contacted DBEs, or those DBEs who have contacted the bidder; verification will include:
 - Names, addresses, and telephone numbers of all contacts made;
 - Description of effort made;
 - Description of the information provided to DBEs concerning the plans and specifications for portions of the work to be performed by subcontractors and/or members of a joint venture;
 - Description of the outcome of the contact
- Verification that the bidder/respondent attempted to solicit DBEs from at least the same geographical area from which it attempted to solicit other subcontractors or joint ventured prospects;
- Verification that the bidder/respondent, consistent with industry standards, gave DBEs the appropriate access and adequate time to review all necessary project plans, scopes, drawings, specifications, and other pertinent documents, as well as sufficient time to prepare subcontract bids and/or negotiate joint venture arrangements;
- A statement verifying reasons the bidder/respondent and the DBE did not succeed in reaching a subcontracting or joint venture agreement, for each DBE the bidder/respondent contacted, attempted to contact, or who contacted the bidder/respondent;

- Verification the bidder/respondent made an effort to assist DBEs in obtaining bonds, lines of credit, or insurance, if any were required;
- Verification that the bidder/respondent rejected DBEs because they were unable to achieve a mutually agreeable price based upon “good faith” negotiations, or was not qualified. Such verification should include a verified statement of the amounts of all bids received from potential subcontractors on the project.
- Verification the bidder/respondent used the services of business, minority, and female organizations that have knowledge of available DBEs.

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

- MARC’s project manager and DBELO.

MARC will ensure that all information is complete and accurate and adequately documents the bidder/respondent’s “good faith efforts” before MARC will commit to the performance of the contract by the bidder/respondent.

Administrative reconsideration 26.53(d)

The bidder must make a written request for administrative reconsideration within seven (7) working days of the notification on lack of “good faith efforts.” That notice must be faxed, mailed, or emailed to:

DBELO
 Mid-America Regional Council 600
 Broadway 200 Rivergate Center
 Kansas City, MO 64105 – 1554
 Telephone: (816) 474 – 4240
 Fax: (816) 421 – 7758
 E-Mail: dbe@marc.org

The Administrative Review Committee is the Executive Director, Director of Financial Affairs, and the Director of Transportation and Environment. The DBELO will process the request, including providing documentation of the determination, and notify the Administrative Review Committee of the request for reconsideration determination. The reconsideration committee will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of the reconsideration, the bidder will have an opportunity to provide written documentation or argument to the Administrative Review Committee, concerning the issue of whether they met the goal or made adequate “good faith efforts.” MARC will notify the bidder, in writing of the decision on reconsideration, explaining the basis of finding that the

bidder did or did not meet the goal or make adequate “good faith efforts” to do so. The bidder may choose to meet in person with the Administrative Review Committee to discuss the findings. The result of the reconsideration process **is not** administratively appealable to the USDOT.

“Good Faith Efforts” when a DBE is replaced on a contract

Termination, Removal, or Substitution of DBE Firm 26.53(f):

MARC requires that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without MARC’s prior written consent. Prior written consent will only be provided where there is “good cause” for termination of the DBE firm, as established by Section 26.53(f)(3) of the DBE regulation:

For purposes of this paragraph, good cause includes the following circumstances:

- (i) The listed DBE subcontractor fails or refuses to execute a written contract;
- (ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;
- (iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.
- (iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;
- (vi) You have determined that the listed DBE subcontractor is not a responsible contractor;
- (vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
- (viii) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (ix) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (ix) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can

self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting to MARC 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 MARC prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise MARC of why it objects to the proposed termination.

In those instances where “good cause” exists to terminate a DBE’s contract, MARC 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. The prime contractor is required to notify the DBE Liaison Officer immediately of the DBE’s inability or unwillingness to perform and provide reasonable documentation. In this situation, MARC requires the prime contractor to obtain MARC’s prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

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 MARC 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/offers, including those who qualify as a DBE. **A DBE contract goal of 22% has been established for this contract.** The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 1), 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.

(23) Counting DBE Participation (§26.55)

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

(24) Certification (§§26.61 – 26.91)

MARC’s policy is to accept DBE certifications from Kansas and Missouri agencies or jurisdictions that have reviewed and certified the submitting firms’ DBE request in accordance with 49 CFR, part 26 (issued March 4, 1999 or as amended).

In accordance with the development of statewide Unified Certification Programs (UCP), the UCP will use the certification standards of Subpart D of part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in USDOT assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards.

Note: *MARC reserves the right to challenge all certification and therefore will handle “Out of State” certifications on a case by case basis.*

MARC is not a certifying agency and use directories developed by KDOT and the MRCC to determine eligible DBEs: For information about the certification process or to apply for certification, firms should contact one of the following agencies:

Missouri Regional Certification Committee (MRCC)	MoDOT External Civil Rights Administrator PO Box 270 Jefferson City, MO 65102 (573) 751-2859 http://www.modot.org/business/contractor_resources/External_Civil_Rights/DBE_program.htm
KCATA	DBE Manager 1200 E. 18th Street Kansas City, MO 64108 (816) 346-0224 http://www.kcata.org/about_kcata/entries/dbe_certification
KDOT	KDOT DBE Office Docking State Office Building Topeka, KS 66612-1568 (785) 296-7940 https://www.ksdot.org/divadmin/civilrights/
MoDOT	External Civil Rights Administrator PO Box 270 Jefferson City, MO 65102 (573) 751-2859 http://www.modot.org/business/contractor_resources/External_Civil_Rights/DBE_program.htm
Kansas City, MO	Human Relations Department 414 E. 12th Street, 4th Floor, City Hall Kansas City MO 64106 (816) 513-1836 http://kcmo.gov/humanrelations/certification-compliance/mwdbe-slbe-affirmative-action/

(25) De-certification (\$26.87)

The de-certification of firms as DBEs will be conducted by the certifying agencies listed above.

(26) Unified Certification Program

MARC is a member of the Unified Certification Program (UCP) administered by the Missouri Department of Transportation. The UCP will meet all the requirements of this section. MARC will use and count DBE credit only those DBE firms certified by the Missouri UCP.

Missouri Regional Certification Committee (MRCC)	External Civil Rights Administrator PO Box 270 Jefferson City, MO 65102 (573) 751-2859 http://www.modot.org/business/contractor_resources/External_Civil_Rights/DBE_program.htm
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Certification Appeals

Any firm or complainant may appeal certification decision to USDOT. Such appeals may be sent to:

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

MARC will promptly implement any USDOT certification appeal decisions affecting the eligibility of DBEs for our USDOT assisted contracting.

(27) Noncompliance Complaints (\$26.103)

Any person who believes that MARC or its subrecipient has failed to comply with the obligations of 49 CFR Part 26 may file a written complaint with the either² the Federal Transit and/or Highway Administrations (FTA/FHWA) Office of Civil Rights in Washington, D. C. The written complaint must be filed within 180 days after the occurrence of the alleged violation or the date on which the person learned of an ongoing violation. The person may also request an extension of time to file beyond the 180 days by stating a reason in the interest of justice for so doing.

² Complaints are filed with the appropriate project funding agency.

(28) Information, Confidentiality, Cooperation (§26.109)

MARC 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, MARC 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.

MARC is a public governmental body subject to the provisions of Missouri's Sunshine Law, Sections 610.010 through 610.030 RSMo. As such, MARC is required to allow citizens to inspect and copy agency's documents deemed to be "public records" under the law. Nothing herein shall prohibit MARC from satisfying a request to inspect and copy documents if legal counsel for MARC is of the opinion that such documents are "public records."

Monitoring Payments to DBEs

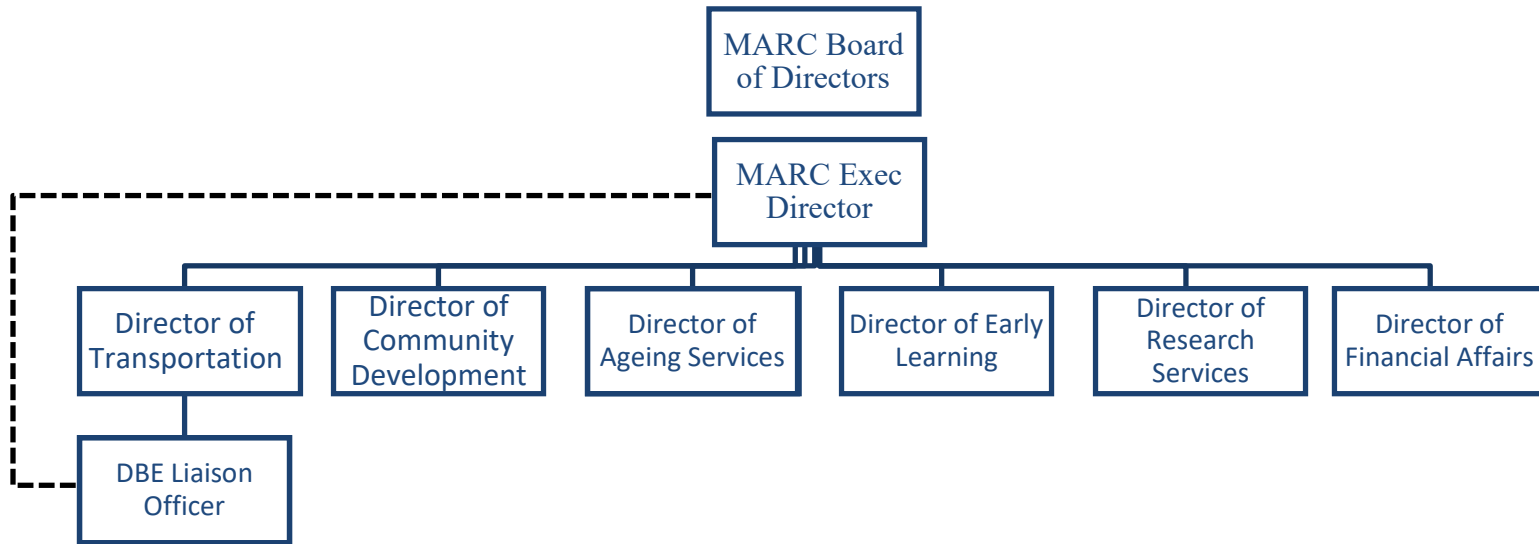
MARC will require prime contractors to maintain records and documents of payments to DBEs for five years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of MARC or USDOT. This reporting requirement also extends to any certified DBE subcontractor. MARC 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 states in the schedule of DBE participation.

(29) Attachments

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

Attachment 1

MARC Organizational Chart



Attachment 2

DBE Directory

Most up-to-date DBE Directory may be found

http://www.modot.org/business/contractor_resources/External_Civil_Rights/mrcc.htm

DBE application may be found

- <https://www.modot.org/dbe-program>
- <https://kcata.diversitycompliance.com/>
- <https://www.kcmo.gov/city-hall/departments/human-relations/certification-and-compliance/small-business-enterprise-sbe-and-small-local-business-enterprise-slbe-programs>

Attachment 3

Monitoring and Enforcement Mechanisms/Legal Remedies

MARC 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. Breach of contract action, pursuant to Missouri Revised Statutes 400

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

DBE Goal Methodology

MARC submits its overall goal to USDOT on August 1 every 3 years starting 2010. In accordance with Federal Regulation CFR 49§26.45, MARC employs a two-step process to calculate its DBE program goal.

MARC 2022 – 2024 DBE Goal = 22%

Step 1

Involves determining a “base figure” for the relative availability of DBEs in the area. The base figure is a percentage calculated as the ratio of available and potentially eligible DBEs to all available firms. The data sources used to derive available DBEs and “all available” firms is as follows:

1. “Available DBEs” is derived from the total number of certified DBEs in the KDOT’s and Missouri Regional Certification Committee (MRCC)¹, DBE directories with the North American Industry Classification (NAICS) of 541820, 541330 and 541320 or whose work type was listed as public relations, architecture and engineering and/or landscape architecture for the nine (9) counties within the Metropolitan Statistical Area (MSA). The 2019 DBE program limited the search to these fields based on the types of contracts anticipated for the upcoming year.

$$\text{Step One Base Figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing, and able (including DBEs and non-DBEs)}}$$

2. “All available” firms is derived from the total number of firms with the NAICS of 541820, 54320 and 541330 found in Census Bureau’s County Business Patterns (CBP) database in the nine (9) counties within the Metropolitan Statistical Area (MSA).

Total # of Available Firms 2018 County Business Patterns (NAICS)				
Industry code	Industry code description	DBE Firms	Total Firms	DBE%
541820	Public Relations	21	49	42.86%
541320	Landscape Architecture	15	19	78.95%
541330	Architecture & Engineering (A&E)	21	421	4.99%

3. “Potentially eligible” DBEs is determined based upon the CBP, regional Disparity Study² and the City of Kansas City, Missouri’s Disadvantaged/Minority and Women’s

¹ MRCC – regional certification committee is the Missouri “one stop” DBE certification group. The Committee (MoDOT, KCMO, KCATA, Metro and Lambert Airport St. Louis, EWGCC, and MARC) is the statewide DBE certification certifiers. If certified by one of these agencies your certification is good throughout MO and those state that have reciprocal certifications with MO.

² Regional Disparity Study completed for the Kansas City region in 2017. Study conducted under the guidance of the City of Kansas City, Kansas City Area Transportation Authority, Jackson County, MO and the Kansas City Public Schools to evaluate minority owned firms availability in the Kansas City region.

Business Enterprise Directory. Listed firms’ functions were evaluated to determine their eligibility to bid for proposed contracts (as listed below), and the resulting list was checked to ensure that no firms listed in the certified DBE list was repeated.

% of funding for Contracting		
Contract Type	Contracting Opportunities	Contract % of Funds
Public Relations*	\$131,180	7%
Landscape Architecture*	\$290,470	16%
A&E*	\$1,452,350	78%
Available funds for contracting	\$2,205,000	100%

* Anticipated

* Anticipated

Base Rate = 12% (rounded)			
Industry code	DBE Firms**	Total Firms	DBE%
541820	21	49	42.86%
541320	15	19	78.95%
541330	21	421	4.99%
Total	57	489	11.66%

** Current KS & MO DBE Directories

Regulations encourage “Wherever Possible, Use Weighting” in your base figure goal calculation. Weighting helps ensure accuracy of the “Step One Base Figure.” While weighting is not required by regulation, it makes the goal calculation more accurate. For instance, since 78% of MARC contract dollars will be spent on Architect/Engineering related projects and 7% on marketing/public engagement, MARC weighted the calculation of the relative availability of firms by the same percentages. This method resulted in a weighted base percent 19.10%.

Weighted Rate =		19.00%		
		% of industry	% of contracting \$\$	Weighted %
541820	(21/49) =	42.86%	7.00%	3.00%
541320	(15/19) =	78.95%	15.50%	12.24%
541330	(21/421) =	4.99%	77.50%	3.87%
Total				19.10%

Therefore, the base goal 11.66% (rounded to 12%) is increased to 19.10% (rounded to 19%).

Step 2:

The **second step** involves examining available evidence to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal that reflects as accurately as possible the DBE participation MARC would expect in the absence of discrimination.

$$\begin{array}{l} \text{A. Proposed Goal} \\ \text{B. MARC 3yr} \\ \hline \hline \text{(A X B)/2 = Goal Adjustment} \end{array}$$

To determine what types of adjustments, if any, are needed to the base figure, additional sources of evidence was examined:

4. The current capacity of DBEs to perform work in MARC’s DOT- assisted contracting program, as measured by the volume of work DBEs have performed in recent years.
5. Reviewed the last three (3) year bi-annual reports (years 2018through 2020) of DBE participation (22%) reported to the FTA.

Last 3 Year	Goal	Achieved Goal
2018	22%	22%
2019	22%	22%
2020	22%	22%

To calculate the DBE goal, MARC averaged the base figure calculation (12%) was averaged with the median of the volume of work DBEs performed in recent years (22%) thus providing the average of the two measures.

$$\frac{12\% + 22\%}{2} = 17\%$$

6. The Step 2 adjustment to the base figure the goal is **19%**.
- To validate the Step 2 calculation MARC completed one additional calculation averaging goals established by the regional MRCC partner agencies $(16\% + 19\% + 23\% + 20\% + 15\%)/5 = 19\%$

Regional MRCC Agencies	Goals
KCMO (MCI Airport)	16.%
MARC	19.%
KCATA	23.%
KCMO (Streetcar)	20.%
MoDOT	15.%
Average	19%

MARC 2022 to 2024 DBE Goal = 19%

Step 3:

Regulations state you must demonstrate the percentage of your goal met solely through race-neutral measures, or whether race-conscious program elements such as DBE contract goals are also needed. Race-neutral program elements are initiatives that help all businesses or small businesses in general, including — but not limited to — DBEs. You must meet the maximum feasible portion of your overall DBE goal by using race/gender-neutral means.

- Race Conscious = 15%
- Race Neutral = 4%

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation:

Past 3 Year	Goal	Race* Neutral (R/N)	Race Conscious	Achieved Goal
2018	22%	6%	16%	22%
2019	22%	6%	16%	22%
2020	22%	6%	16%	22%

*Anything over 16% is considered achieved by race – neutral means

- A) Third party contracting % of funds for A&E = 78%
- B) DBE Goal subcontracting opportunities = 19%
- C) A * B = Race Conscious 15%
- D) C - B = Race Neutral 4%

Race Conscious 15%

Race Neutral 4%

*In the Kansas City area 91% of available firms for A&E prime contracting opportunities are non-DBE)

Attachment 5

Forms 1 & 2 for Demonstration of Good Faith Efforts

FORM 1: 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. (if applicable) _____

By _____
(Signature) Title

FORM 2: LETTER OF INTENT
(Submit this page for each DBE subcontractor.)

Name of bidder/offeror's firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Telephone: _____ e-mail address: _____

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)

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.

Attachment 6

49 CFR Part 26

<https://www.ecfr.gov/cgi-bin/text-idx?SID=c42b1f9494d8fbd3fee95cb2c72cf809&mc=true&node=pt49.1.26&rgn=div5>