

ALASKA RAILROAD CORPORATION

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Alaska Railroad Corporation

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**Alaska Railroad Corporation (ARRC)
Disadvantaged Business Enterprise (DBE) Program
Policy Statement**

The ARRC has established a DBE Program in accordance with the regulations of the DOT, 49 C.F.R. Part 26. The ARRC has received federal financial assistance from DOT and, as a condition of receiving this assistance, the ARRC has signed an assurance that it will comply with 49 C.F.R. Part 26.

It is the policy of the ARRC to ensure that DBEs, as defined in 49 C.F.R. Part 26, have an equal opportunity to receive and participate in Federal Transportation Administration (FTA), Federal Highways Administration (FHWA), or Federal Aviation Administration (FAA)-assisted contracts. It is also our policy:

- (1) to ensure nondiscrimination in the award and administration of FTA, FHWA, or FAA-assisted contracts;
- (2) to create a level playing field on which DBEs can compete fairly for FTA, FHWA, or FAA-assisted contracts;
- (3) to ensure that the ARRC's DBE Program is narrowly tailored in accordance with applicable law;
- (4) to ensure that only firms that fully meet 49 C.F.R. Part 26 eligibility standards are permitted to participate as DBEs;
- (5) to help remove barriers to the participation of DBEs in FTA, FHWA, or FAA-assisted contracts; and
- (6) to assist the development of firms that can compete successfully in the market place outside the DBE Program.

The ARRC's Manager, Equal Employment Opportunity (EEO) is delegated as the DBE Liaison Officer. In that capacity, the Manager, EEO is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the ARRC in its financial agreements with DOT.

The ARRC will disseminate this policy statement to its Board of Directors and all components of the ARRC organization. We will distributed this statement by mail to DBE and non-DBE business organizations that perform work for us on FTA, FHWA, or FAA-assisted contracts and have post this DBE Program on the ARRC's Internet web site.

Dated: 11 May 04

Signed: 
Patrick K. Gamble, President & CEO

I. DEFINITIONS

The following definitions, along with those set forth in 49 C.F.R. Part 26, shall apply for purposes of this DBE Program.

- A. **ADOT&PF.** The State of Alaska Department of Transportation and Public Facilities.
- B. **ARRC.** The Alaska Railroad Corporation.
- C. **Broker.** An individual that arranges for the delivery or provision of materials, supplies, equipment, insurance, bonding, etc., that is necessary for the completion of an ARRC project. A broker of materials certified in a supply category must be responsible for scheduling the delivery of materials and must be fully responsible for ensuring that the materials meet project specifications before any DBE credit will be given under this Program.
- D. **Commercially Useful Function or CUF.** Work performed by a DBE firm in a particular transaction that, in light of industry practices and other relevant considerations, has a necessary and useful role in the transaction, i.e., the firm's role is not a superfluous step added in an attempt to obtain credit toward DBE goals. If, in the ARRC's judgment, the firm (even though an eligible DBE) does not perform a Commercially Useful Function in the transaction, no credit toward the goal may be awarded.
- E. **Contract.** A mutually binding legal relationship or any modification thereto obligating the seller to furnish supplies or services, including construction, and the buyer to pay for them.
- F. **Contractor.** One who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.
- G. **Department or DOT.** The United States 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"), but, for purposes of this Program, excluding the Federal Railroad Administration ("FRA").
- H. **Disadvantaged Business Enterprise or DBE.** A for-profit small business concern:
 - 1. that is at least 51% owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51% 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.
- I. **DOT-assisted contract.** Any contract between a recipient and a contractor (at any tier) funded in whole or in part with FTA, FHWA, or FAA financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.
- J. **Good Faith Efforts.** Efforts to achieve a DBE goal or other requirement of 49 C.F.R. Part 26 which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- K. **Manufacturer.** An individual (or individuals) who owns, operates, or maintains a factory or establishment that produces on the premises the components, materials, or supplies obtained by the ARRC or a contractor.
- L. **Municipality.** Municipality of Anchorage.
- M. **Race-conscious measure or program.** One that is focused specifically on assisting only DBEs, including women-owned DBEs.
- N. **Race-neutral measure or program.** One that is, or can be, used to assist all small businesses. For the purpose of this Program, “race neutral” includes gender-neutrality.
- O. **Recipient.** 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.
- P. **Regular Dealer.** A firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, a firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns or operates distribution equipment. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this definition.
- Q. **SBA.** Small Business Administration.
- R. **Secretary.** The Secretary of Transportation or his/her designee.

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

T. Socially and Economically Disadvantaged Individual. Any individual who is a citizen of the United States (or lawfully admitted permanent resident) and who is:

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis; or
2. Any individual in the following groups, members of which are presumed to be socially and economically disadvantaged:
 - a. “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - b. “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;
 - c. “Native Americans,” which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - d. “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;
 - e. “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal, or Sri Lanka;
 - f. Women; or
 - g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

II. NONDISCRIMINATION

A. Policy

The ARRC 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 C.F.R. Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE Program, the ARRC 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.

B. Scope and Duration of Program

This Program applies to all contracts covered by 49 C.F.R. Part 26. The ARRC will continue to carry out this Program until all funds from DOT financial assistance have been expended. The ARRC will also provide to DOT updates representing significant changes in the Program.

III. ADMINISTRATION OF DBE PROGRAM

A. Quotas

The ARRC does not use quotas in any way in the administration of this DBE Program.

B. DBE Liaison Officer

1. Designation. The ARRC has designated the following individual as its DBE Liaison Officer:

Jerry Anderson
Vice President, Finance & Administration
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Telephone: (907) 265-2516
Facsimile: (907) 265-2522
E-mail: andersonj@akrr.com

The ARRC DBE Liaison Officer is responsible for implementing all aspects of the ARRC's DBE Program and ensuring that the ARRC complies with all provisions of 49 C.F.R. Part 26. The DBE Liaison Officer has direct, independent access to the ARRC's President & CEO concerning DBE matters. The DBE Liaison Officer has a full-time professional employee on his staff, the Manager, EEO, who is assigned to the DBE Program. An organizational chart showing the DBE Liaison Officer's position in the organization is found in Attachment "A" to this Program.

2. Responsibilities. The DBE Liaison Officer is responsible for developing, implementing, and monitoring the DBE Program, in coordination with other appropriate officials. The DBE Liaison Officer's duties and responsibilities, which may be delegated to others from time to time, include the following:
 - a. Gathers and reports statistical data and other information as required by DOT.
 - b. Reviews third party contracts and purchase requisitions for compliance with the DBE Program.
 - c. Works with relevant ARRC departments to set overall annual goals.
 - d. Ensures that bid notices and requests for proposals are available to DBEs and other businesses in a timely manner.
 - e. Identifies DOT-assisted contracts and procurements so that DBE goals may be included in solicitations (both race-neutral methods and contract-specific goals, if any) and monitors results.
 - f. Analyzes the ARRC's progress toward goal attainment and identifies ways to improve progress.
 - g. Participates in pre-bid meetings as required.
 - h. Advises the President & CEO and Board of Directors on DBE matters and achievement.
 - i. Participates with the Legal Department and the Manager, EEO in determining contractor compliance with good faith efforts.
 - j. Provides DBEs and other small businesses with information and assistance in preparing bids and in obtaining bonding and insurance if possible.

- k. Plans and participates in DBE training programs that may be held from time to time.
- l. Provides outreach to DBEs and community organizations to advise them of opportunities.
- m. Maintains an updated DBE Directory of certified DBEs with the cooperation and assistance of ADOT&PF and the Municipality.

C. Federal Financial Assistance Assurance The ARRC has signed the following assurance, applicable to all DOT-assisted contracts and their administration:

The ARRC 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 C.F.R. Part 26. The ARRC shall take all necessary and reasonable steps under 49 C.F.R. Part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The ARRC's DBE Program, as required by 49 C.F.R. Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the ARRC 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.

D. DBE Financial Institutions

It is the policy of the ARRC to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. The ARRC has investigated and will continue to investigate the availability of such institutions. To date, no financial institutions owned and controlled by socially and economically disadvantaged individuals have been identified.

E. DBE Directory

The ARRC recognizes DBEs certified by the Municipality and ADOT&PF. The ARRC maintains DBE Directories published by the Municipality and ADOT&PF at

its corporate headquarters in Anchorage and updates those directories whenever they are updated by ADOT&PF and the Municipality. ADOT&PF's directory may also be found at www.dot.state.ak.us. Individuals interested in obtaining a copy of either directory may contact the ARRC's DBE Liaison Officer or contact the Municipality at (907) 343-4895 or ADOT&PF at (907) 269-0850.

F. Required Contract Clauses

1. Contract Assurance. The ARRC will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 C.F.R. 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 the contract, which may result in the termination of this contract or such other remedy as the ARRC deems appropriate.

2. Prompt Payment. The ARRC 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 (30) days from the receipt of each payment the prime contractor receives from the ARRC. The prime contractor agrees further to return retainage payments to each subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed. Any retainage not returned to a subcontractor will be reported to the ARRC by the prime contractor. This clause applies to both DBE and non-DBE subcontractors.

G. Monitoring and Enforcement

1. Program Monitoring. The ARRC's DBE Program will be monitored by the DBE Liaison Officer, the ARRC's Manager, EEO, ARRC Project Managers, and ARRC Contract Administration Specialists in accordance with 49 C.F.R. Part 26.

2. CUF Monitoring.

- a. CUF Monitoring Report. When a DBE begins work on a project, the ARRC Project Manager (or the ARRC Manager, EEO if there is no project manager) must complete a report detailing the contractor's performance of a CUF. This form must be completed for all DBE subcontractors, no matter what tier, as well as for all DBE prime contractors, manufacturers, regular dealers, and brokers.

If ARRC personnel observe work being done or materials being furnished by a firm other than the appropriate DBE, the ARRC Project Manager (or the ARRC Manager, EEO if there is no project manager) will promptly notify the contractor in writing that an apparent CUF violation is taking place.

- b. Timing of Monitoring. At a minimum, CUF monitoring will take place when a DBE starts work, during the peak period of the DBE's work, and whenever there is a change in the execution of work. On projects where the DBE will be working more than one season, the monitoring process will be repeated each season. Additional reports will be made at any time that project personnel suspect that a CUF is not being performed.
- c. Investigation and Notice to Contractor. If a project manager (or the ARRC Manager, EEO if there is no project manager) believes that a contractor or subcontractor is not performing a CUF, the project manager (or the ARRC Manager, EEO) must complete a CUF Monitoring Report setting forth the practices in question and investigate the practice(s). If it is determined that a CUF is not being performed, the contractor shall be immediately notified in writing and informed that no credit will be given for the work involved. In the event that a DBE is unable to perform a CUF, the contractor shall add DBE subcontractors as necessary to replace the dollar value of DBE participation lost by the original DBE's inability to perform a CUF.
- d. Disputes Regarding CUF Determinations. Disputes concerning CUF determinations will be handled in accordance with the Contract Controversies provisions of the ARRC's Procurement Rules, as they may be amended from time to time.

- e. Typical CUF Problems. Some of the frequently encountered examples of CUF problems are:
1. second tier subcontractors (when a non-DBE subcontractor is hired by a DBE subcontractor to perform work subcontracted to the DBE);
 2. questionable equipment arrangements (when a DBE is using equipment belonging to the prime contractor or another firm; occasional use of special equipment, or use of equipment belonging to others at a remote site may be acceptable when requested in writing beforehand and approved by the project manager (or the ARRC Manager, EEO if there is no project manager), but continual reliance on equipment belonging to others is an indication of CUF problems);
 3. material source is a non-DBE competitor (when a DBE claims to manufacture or supply a product, and the actual source of the product is a non-DBE firm);
 4. "borrowed" personnel (the DBE subcontractor is using the prime contractor's personnel or another company's personnel to perform the DBE's item(s) of work);
 5. prime contractor (or another firm) supervising DBE crew (the DBE's work force is being supervised by personnel from outside the DBE firm).

3. Damages and Sanctions.

- a. Damages for Subcontracting Violations. When a contractor switches subcontractors (regardless of DBE involvement) without regard to the procedure required by the contract and this DBE Program (see Section I(4) below), and the value of the subcontract exceeds one - half of one percent of the contract value, the ARRC has two options, as set forth in Rule 1200.3(e) of the ARRC Procurement Rules:
1. assess contract damages against the contractor in an amount that does not exceed ten percent of the value of the subcontract in question, which damages may be withheld from contractor payments; or
 2. cancel the contract.

- b. Sanctions for Violating DBE Contract Specifications. In accordance with Rule 1800.21 of the ARRC Procurement Rules, the ARRC may suspend a contractor for up to three years for cause. A contractor's failure without good cause to comply with its DBE requirements under this Program shall constitute "cause" for purposes of Rule 1800.21.
4. Reports to DOT. The ARRC will bring to the attention of DOT 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 49 C.F.R. § 26.107. The ARRC will also consider similar action under its own legal authorities, including responsibility determinations in future contracts.

H. Overall Goals

1. Amount of Goal. The ARRC's overall goal for Fiscal Year 2000 is the following: 6.7% of the Federal financial assistance the ARRC will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

Based upon the amount of DOT-assisted contracts the ARRC expects to let during Fiscal Year 2000, which is \$4,800,000, the ARRC has set a goal of expending \$321,600 with DBEs.

2. Method. In accordance with 49 C.F.R. § 26.45 (c)(4), which allows recipients of DOT federal financial assistance to use another DOT recipient's goal if the other DOT recipient is in the same, or substantially similar, market, the ARRC has adopted the overall goal established under 49 C.F.R. Part 26 by ADOT&PF. Because the ARRC's contracting program and that of ADOT&PF are similar in nature (generally planning, design, and construction on a statewide basis), and because the ARRC is a new DOT recipient and its DBE Program has no significant recorded history, it was determined that no adjustments to the ADOT&PF goal were required at this time.
3. Transit Vehicle Manufacturers. The ARRC will require each transit vehicle manufacturers, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the goal setting requirements of 49 C.F.R. § 26.49.
4. Process. The ARRC submits its overall goal to DOT on August 1 of each year, except September 1, 1999.

Before establishing the overall goal each year, the ARRC will consult, as it did before adopting Fiscal Year 2000's goal, with relevant minority, women's and general contractor groups, community organizations, and other officials and organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the ARRC's efforts to establish a level playing field for the participation of DBEs.

The ARRC will publish a notice of its proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the ARRC's corporate headquarters in Anchorage for thirty (30) days following the date of the notice, and informing the public that the ARRC and DOT will accept comments on the goal for forty-five (45) days from the date of the notice. The notice will be issued in the Anchorage Daily News, the Fairbanks Daily News Miner, and the Seward Phoenix Log, and published on the ARRC's Web site at www.akrr.com. Normally, the ARRC will publish this notice by June 1 of each year. The notice will include an address to which comments may be sent and addresses (including offices and web sites) where the proposal may be reviewed. The ARRC's overall goal submission to DOT will include a summary of any information and comments received during this public participation process and the ARRC's responses.

The ARRC will begin using its overall goal on October 1 of each year, unless instructions otherwise have been received from DOT.

5. Estimated Race-Neutral and Race-Conscious Participation. The ARRC will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. The ARRC uses the following race-neutral means to increase DBE participation:
 - a. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
 - b. Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs and other small businesses on mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate; and

- c. Ensuring distribution of the DBE directories relied upon by the ARRC (Municipality and ADOT&PF) through print and electronic means, to the widest feasible population of potential prime contractors.

Due to lack of historical information, the ARRC is unable to estimate the amount of the overall goal it may obtain through race-neutral methods. Therefore, the ARRC will attempt to achieve the overall goal through project goals that will be continuously reassessed throughout the first year of this Program, utilizing both race-neutral and race-conscious methods. The ARRC will track and report race-neutral and race-conscious participation separately and will establish percentages of each to use in future years in setting its overall goal and respective percentages.

6. Contract Goals. The ARRC will use contract goals to meet any portion of the overall goal that it 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 the overall goal that is not projected to be met through the use of race-neutral means.

The ARRC will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The ARRC 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 work). The ARRC will express its contract goals as a percentage of the federal share of a DOT-assisted contract.

I. **Good Faith Efforts**

1. Information to be Submitted. Every bidder/offeror responding to a solicitation for which a contract goal has been set is required to meet the goal or demonstrate that it has made good faith efforts to do so. The ARRC treats bidders'/offerors' compliance with this good faith efforts requirement as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidder/offeror to submit the following information on an ARRC DBE Utilization Report:

- a. The names and addresses of DBE firms that will participate in the contract;
- b. A description of the work that each DBE will perform;

- c. The dollar amount of the participation of each DBE firm;
 - d. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - e. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 - f. If the contract goal is not met, evidence of good faith efforts.
2. Demonstration of Good Faith Efforts. The obligation of the bidder/offeror is to make good faith efforts to meet any contract goal the ARRC may have set. The bidder/offeror can demonstrate that it has done so by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts include, but are not limited to:
- a. Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder/offeror must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder/offeror must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
 - b. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goal will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
 - c. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
 - d. Negotiating in good faith with interested DBEs. It is the bidder's/offeror's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why

additional agreements could not be reached for DBEs to perform the work.

A bidder/offeror using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's/offeror's failure to meet the contract goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder/offeror of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

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- e. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example, union versus non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
 - f. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the ARRC or the contractor.
 - g. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
 - h. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

The Manager, EEO and the ARRC Legal Department 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 ARRC will ensure that all information is complete and accurate and adequately documents the bidder's/offeror's good faith efforts before it commits to the performance of the contract by the bidder/offeror.

3. Administrative Reconsideration. Within ten (10) calendar days of being informed by the ARRC that it is not responsive because it has not

documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration of the ARRC's decision. Bidders/offerors must make this request in writing to the ARRC's reconsideration official:

Phyllis C. Johnson
Vice President & General Counsel
Alaska Railroad Corporation
P.O. Box 107500
Anchorage, Alaska 99510-7500

Telephone: (907) 265-2461
Facsimile: (907) 265-2443

The reconsideration official will have played no 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 the individual making the determination on reconsideration to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The ARRC will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the determination upon reconsideration is not administratively appealable to DOT.

4. Good Faith Efforts When a DBE Is Replaced On a Contract. A prime contractor is required to use the DBE subcontractors to perform the work as itemized on the ARRC DBE Utilization Report submitted before the contract award. The prime contractor shall not thereafter terminate the DBE subcontractor (or an approved substitute DBE firm) and perform the work of the terminated subcontract with its own forces without the prior written consent of the ARRC.

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor must immediately notify the ARRC Project Manager (or the ARRC Manager, EEO, if there is no project manager) of the termination or default and the circumstances surrounding the termination or default. The contractor shall take immediate steps, without further order or direction from the ARRC, to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated,

to the extent needed to meet the contract goal established by the ARRC for the procurement.

In the event that a contractor violates the requirements of this section, the ARRC will invoke the damages and/or sanctions provisions of this DBE Program, as applicable.

J. Counting DBE Participation

The ARRC will count DBE participation toward overall and contract goals as provided in 49 C.F.R. § 26.55.

K. Certification

The ARRC does not certify, decertify, recertify, etc., DBEs directly, nor does it entertain any ineligibility proceedings to certifications of other entities. The ARRC recognizes DBEs certified and/or recognized by ADOT&PF (a DOT recipient) and the Municipality (a DOT subrecipient).

The ARRC, ADOT&PF, the Municipality, the City of Kenai, and the North Slope Borough (all current DOT recipients) will participate, along with any other entities in the State of Alaska that may subsequently become DOT recipients, in a Unified Certification Program by March 4, 2002.

L. Information Collection and Reporting

1. Bidders List. The ARRC will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted on contracts. The information collected will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms. This information will be requested of all bidders/offerors and must be returned to the ARRC at the time that a bidder/offeror responds to a Request for Proposal or Invitation to Bid.
2. Monitoring Payments to DBEs. The ARRC will require prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records must be made available for inspection by any authorized representative of the ARRC or DOT. This reporting requirement also extends to any certified DBE subcontractor. The ARRC will keep a running tally of actual payments to DBE firms for work committed to them at the time of the contract award.

The ARRC will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual

payment to DBE subcontractors equals or exceeds the dollar amounts stated in the ARRC DBE Utilization Report.

3. Reporting to DOT. The ARRC will report DBE participation to DOT on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.
4. Confidentiality. The ARRC will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state, and local law.

M. Complaint Procedures

1. Complaints to ARRC. Any person who believes that the ARRC is not in compliance with its federal obligations under this DBE Program may file a complaint with the ARRC DBE Liaison Officer. The complaint must be in writing, signed and dated. The complaint must be filed with the ARRC no later than 180 days after the date that the complainant knew or should have known of the alleged violation. The complaint will be investigated by the DBE Liaison Officer or his/her designee and the results of the investigation will be provided to the complainant.
2. Complaints to DOT. Any person who believes that the ARRC has failed to comply with its obligations under 49 C.F.R. Part 26 may file a written complaint with the Office of Civil Rights of the Federal Transit Administration at 400 Seventh Street, S.W., Washington, D.C. 20590. The complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the complainant learned of a continuing course of conduct in violation of 49 C.F.R. Part 26. The complaint will be processed in accordance with 49 C.F.R. § 26.103.

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