



SMALL BUSINESS ENTERPRISE PROGRAM PLAN

Appendix to FTA DBE Program Plan/May 2026

Purpose

The Metropolitan Council (Council) has established an Emerging Small Business Enterprise (ESBE) and Small Business Enterprise (SBE) program in order to ensure all businesses, specifically small businesses, receive adequate opportunities to participate in Council contracting and consulting activities as prime contractors. The Council is required by 49 Code of Federal Regulation (CFR) Subsection 26.39 to maximize its Disadvantaged Business Enterprise (DBE) goal through DBE-neutral means. The Council has received Federal financial assistance from the US Department of Transportation and the US Environmental Protection Agency, and as a condition of receiving this assistance, the Council has signed an assurance that it will comply with 49 CFR Part 26.

Policy

As specified in 49 CFR 26.39 and 49 CFR 26.51, the Council has created these programs to foster small business participation. The programs are designed to increase opportunities for all small businesses, especially emerging small business enterprises, in an effort to promote economic growth and create jobs; and ensure that the maximum feasible portion of the Council's DBE participation is achieved through DBE-neutral means. The programs are small business set-aside programs, which restrict competition on certain prime contracts to only small businesses. The program allows the Council to set contract-specific goals where ESBEs and SBEs can participate as either subcontractors or prime contractors, and on these projects prime contractors will be required to demonstrate good faith efforts to meet the established contract goal(s). The program will facilitate competition and small business participation on federally assisted Council contracts.

Small Business Goals

The Council will evaluate projects for ESBE and SBE contract goals on federal-aid projects determined to have sufficient opportunities. The Council will only establish ESBE and SBE goals if there are sufficient subcontracting opportunities for currently certified ESBE and SBE firms, and only if there are enough ESBE and SBE firms ready, willing, and able to complete the work on the contract to ensure a competitive bidding environment. This program will be implemented in the same fashion as the DBE program with the following characteristics:

- A. Prime contractors will either have to meet the established ESBE and/or SBE goal(s) or demonstrate Good Faith Efforts to do so;
- B. Prime contractors will be required to submit an ESBE/SBE Commitment Form and a Letter of Intent Form(s) for the ESBE and/or SBE firms they will be using; and
- C. ESBE and SBE firms will be required to perform a Commercially Useful Function; this will be monitored through onsite and desk audits at the discretion of the Office of Civil Rights and Small Business Programs.

Applicability

This policy applies only to Council construction and consultant contracts funded in whole or in part with federal financial assistance. This policy is not applicable to the award of Council contracts for the purchase of goods or on any one hundred percent (100%) state or locally funded contracts.

Definitions

The Council will adopt the definitions contained in 49 CFR Part 26.5 and 13 CFR 124.103(c) and 124.104 for this policy, except as otherwise set forth herein.

Emerging Small Business Enterprise (ESBE): A business concern in transportation or wastewater-related construction or consultant services industry meeting the following requirements:

- A. Owned by one or more individuals whose personal net worth does not exceed the amount stated in 49 CFR Part 26.68 and whose adjusted gross income does not exceed \$500,000 averaged over three years, or in the case of any publicly-owned business, its stock is owned by one or more individuals whose personal net worth does not exceed the amount stated in 49 CFR Part 26.68 and whose adjusted gross income does not exceed \$500,000 averaged over three years; and
- B. Is a United States Citizen or Legal Permanent Resident; and
- C. Whose management and daily business operations are controlled by one or more of the owners as listed above, in accordance with the ownership and control requirements of the DBE program, as outlined by 49 CFR 26.71; and
- D. Whose annual receipts for the firm, and any of its affiliates, do not exceed 15% of the DBE statutory cap rounded to the nearest whole number (Millions), averaged over the most recent three years. Affiliation is defined by the SBA under [13 C.F.R. § 121.103](#).

Small Business Enterprise (SBE): A business concern in the transportation or wastewater-related construction or consultant services industry meeting the following requirements:

- A. Owned by one or more individuals whose personal net worth does not exceed the amount stated in 49 CFR Part 26.68 and whose adjusted gross income does not exceed \$500,000 averaged over three years, or in the case of any publicly-owned business, its stock is owned by one or more individuals whose personal net worth does not exceed the amount stated in 49 CFR Part 26.68 and whose adjusted gross income does not exceed \$500,000 averaged over three years; and
- B. Is a United States Citizen or Legal Permanent Resident; and
- C. Whose management and daily business operations are controlled by one or more of the owners as listed above, in accordance with the ownership and control requirements of the DBE program, as outlined by 49 CFR 26.71; and
- D. Whose annual receipts for the firm, and any of its affiliates, do not exceed 50% of the DBE statutory cap rounded to the nearest whole number (Millions), averaged over the most recent three years. Affiliation is defined by the SBA under [13 C.F.R. § 121.103](#).

Size Adjustments

The ESBE and SBE business size caps listed in part D above will be adjusted based on the DBE Statutory Cap (49 CFR 26.65(b)) annually. The ESBE will be calculated at 15% of the DBE statutory cap rounded to the nearest whole number (Millions). The SBE will be calculated at 50% of the DBE statutory cap rounded to the nearest whole number (Millions).

Eligibility for Certification

The Minnesota Department of Transportation (Certifying Entity) will be responsible for the certification of ESBE and SBE firms. The Council may choose to participate in the certification process at their discretion.

In order to be eligible for certification, the firm must be a for-profit business that meets the ESBE or SBE definitions listed above. A firm's eligibility shall be determined by utilizing the certification procedures and application process outlined in 49 CFR Part 26 or as otherwise set forth herein.

Eligibility includes firms that meet the following criteria:

- A. Only firms that have demonstrated experience performing work within NAICS codes that are related to the kinds of work the Council utilizes on contracts, will be certified. ESBE or SBE certifications will not be issued to aspirational businesses, business plans or startup firms that have not performed any work at the time of application.
- B. Firms must be independently owned and operated. Not reliant on any one company for work, materials, labor, or other resources.
- C. Firms owned by trusts, holding companies, or other entities (e.g. subsidiaries) or other non-traditional ownership will not be considered.
- D. Brokers or firms arranging the procurement of products or goods (including shipping) are ineligible.

Counting participation

ESBE and SBE participation will be counted based on the same rules and classifications as prescribed by the counting rules of the DBE program, established by rule in 49 CFR 26.55 (a) - 49 CFR 26.55(e)(2)(ii).

- A. All ESBE participation is eligible to count towards either the ESBE or SBE goal, as all ESBE firms also meet the eligibility criteria for SBE certification.
- B. SBE firms that do not also meet the eligibility criteria for the ESBE program will not be eligible to be counted towards an ESBE project goal.

Certification Procedures for Small Business Enterprises

ESBE and SBE certification will follow the process outlined in 49 CFR part 26, but without the consideration of the social disadvantage of the applicant firm's owner(s).

- A. A business may apply at any time to be certified as an ESBE or SBE. Such application must be made on the application form supplied by the Certifying Entity.

- B. If a business is to be considered an ESBE or SBE for the purpose of bidding on and/or being awarded an ESBE or SBE contract, the business must be certified by the Certifying Entity at the time of bid opening.
 - 1. A Joint Venture may bid on and/or be awarded an ESBE or SBE set-aside contract provided that the Joint Venture consists of two or more properly certified ESBE or SBE firms.
- C. All applications must be completed in their entirety before they will be considered by the Certifying Entity. If an applicant knowingly supplies false or inaccurate information, the applicant shall be disqualified and may be subject to further penalties as provided by law.
- D. The business, or any principal owner of the business, must not have been debarred or convicted of bid-related crimes or violations within the past six years in Minnesota or any federal jurisdiction, or be under notice of intent to debar.

Approval or Denial of Certification

Initial Application

When a firm is approved for certification, the business will be notified in writing of such certification. The certification shall be effective as of the date of approval and shall remain valid unless revoked by the Certifying Entity. ESBE and SBE firms must provide updated information and complete a “No Change Declaration” each year, if applicable, for renewal of ESBE and SBE certification. The Certifying Entity may conduct a certification review of a certified ESBE and SBE firm, including an on-site review, at their discretion, or in response to a complaint or other information concerning the firm's eligibility.

When an applicant is denied certification as an ESBE or SBE, the business shall be notified in writing of the reasons for that decision. The business may appeal this decision to MnDOT. The burden of proof of eligibility shall be upon the applicant in any such proceeding. The applicant is not prohibited from contracting with the Council during the pendency of its appeal; however, it will be unable to bid on and/or be awarded an ESBE or SBE set-aside contract or receive credit towards ESBE or SBE goals during this time.

Removal/Decertification

When a Certifying Entity intends to decertify an ESBE or SBE for failure to meet the requirements of this program, or as the result of an investigation, the business shall be notified in writing of the intent to decertify. The Certifying Entity will provide the basis for their determination in its written notification to the firm. The Certifying Entity, or other entity as prescribed by law, may conduct an investigation to determine the validity of any third-party allegations or eligibility complaints. If a preliminary determination is made to decertify the firm, the firm will be given an opportunity to contest the proposed decertification/removal via written documentation and, if warranted, an in-person meeting. The business must contest such proposed action in writing to the Certifying Entity within 30 calendar days of receipt of the Intent to Decertify. Following the review, the ESBE or SBE firm will be notified in writing of the Certifying Entity's determination. The business shall be eligible to participate as an ESBE or SBE during the pendency of its appeal.

Fostering Small Business Enterprise Participation

The Council shall facilitate ESBE and SBE participation on construction and consultant services contracts by the following means.

- A. Continuously evaluate the Council's contracting requirements to ensure all of the requirements are necessary and do not act as an obstacle hindering ESBE or SBE firms from being able to bid as a prime contractor or subcontractor.
- B. Continue to analyze contracts to ensure that they are not unjustifiably bundled. In determining whether a contract is unjustifiably bundled, the Council may consider the following criteria.
 - 1. The level of risk and cost associated with maintaining smaller-sized projects compared to a "bundled" contract.
 - 2. The ability to create stand-alone projects that have a significant pool of ready, willing, and able ESBE or SBE firms.
- C. Examine the possibility of facilitating joint ventures among ESBEs and SBEs to bid on contracts.
- D. Exploring best practices to share the letting information with SBEs.

Set Asides

The Council will evaluate projects with cost estimates not to exceed \$2 million for ESBE and SBE program set asides.

Severability

If any section, subsection, provision, clause, or portion of this Program is adjudged unconstitutional or invalid by a court of competent jurisdiction, the remainder of this Program shall not be affected thereby.

Review

The operation of the Program contained herein and the need for its continuation will be reviewed by the Council annually.

Authority

49 CFR 26 and Subsections 26.1, 26.5, 26.23, 26.39, and 26.51.