


Category:	JAMM Transit Policies	INCA Community Services JAMM Transit Policy 
Developed Date:	03/18	
Adopted Date:	03/18	
Revised Date:	n/a	
Responsible: Transit Director		
Forms: Uniform Certification Application Form		
References: ODOT, Regulations 49 CFR Part 26		

Disadvantaged Business Enterprise (DBE) Program

Purpose

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

Policy

It is the policy of JAMM Transit to ensure that DBEs are defined in Part 26, have an equal opportunity to receive and participate in DOT - assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT - assisted contracts;
2. To create a level playing field on which DBEs can complete fairly for DOT - assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT assisted contracts;
6. To assist the development of firms that can compete successfully in the market place outside the DBE Program.

DBE Liaison Officer

The Transit Director has been delegated as the DBE Liaison Officer. In that capacity, the Transit Director 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 JAMM Transit in its financial assistance agreements with the Department of Transportation.

Subpart A - General Requirements

Section 26.1, 26.3 Objectives:

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

Section 26.3 Applicability:

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

Teas-21, Pub. L. 105-178.

Section 26.5 Definitions:

JAMM Transit will adopt the definitions contained in section 26.5 of Part 26 for this program.

Section 26.7 Non-discrimination Requirements

JAMM Transit 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 the DBE program, JAMM Transit 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.

Section 26.11 Record Keeping Requirements

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

JAMM Transit will report DBE participation to the Oklahoma Department of Transportation (ODOT) as follows:

- JAMM Transit's DBE participation will be reported to ODOT/Transit Programs Division on a quarterly basis. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11 (c)

JAMM Transit will use a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculate overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

JAMM Transit will collect this information through the State of Oklahoma's statewide bidder list, as maintained by ODOT's Regulatory Services.

Section 26.13 Assurances

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

Federal Financial Assistance Agreement Assurance: 26.13 (a)

JAMM Transit shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to JAMM Transit of its failure to carry out its approved program, the Department may impose sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

Contract Assurance: 26.13b

JAMM Transit will ensure that the following clause is placed in every DOT-assisted contract and

subcontract:

- The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate.

Subpart B - Administrative Requirements

Section 26.21 DBE Program Updates

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

Section 26.25 DBE Liaison Officer (DBELO)

JAMM Transit has designated the following individual as our DBE Liaison Officer (DBELO):

- Erica Pogue, Transit Director
- 371 W. 10th Street, PO Box 807
- Atoka, OK 74525
- 580-889-5193
- e.pogue@incacaa.org

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that JAMM Transit complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director, LaQuita Thornley and the Board Chair, Tara Huddleston concerning DBE program matters. An organizational chart displaying the DBELO's position in the organization is found in the Program Organizational Chart.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of approximately 65 employees to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment).
6. Analyzes JAMM Transit's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the governing body on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Participates in DBE training seminars/workshops.
11. Identifies potential DBEs and submits "Request for DBE Certification" to ODOT.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Monitors ODOT's updated directory on certified DBEs to determine prospective DBEs to contract with.

Section 26.27 DBE Financial Institutions

It is the policy of JAMM Transit to investigate the full extent of services offered by financial

institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. JAMM Transit has made the following efforts to identify and use such institutions: JAMM Transit's DBELO will explore the full extent of services offered by banks and other financial institutions that qualify as DBEs in JAMM Transit's service area and determine areas in which JAMM Transit may reasonably utilize their services. JAMM Transit will also encourage its prime contractors to use the services of DBE financial institutions. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

Section 26.29 Prompt Payment Mechanisms

Prompt Payment: 26.29(a)

JAMM Transit 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 [specify number] days from the receipt of each payment the prime contract receives from JAMM Transit. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of JAMM Transit. This clause applies to both DBE and non-DBE subcontracts.

Retainage: 26.29(b)

- The prime contractor agrees to return retainage payments to each subcontractor within 30 days after the subcontractors 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 JAMM Transit. This clause applies to both DBE and non-DBE subcontracts.

Monitoring and Enforcement: 26.29(d)

JAMM Transit has established the following mechanism to monitor and enforce that prompt payment and return of retainage is in fact occurring:

- JAMM Transit has established prompt payment contract clauses and reporting requirements to monitor and enforce that prompt payment and return of retainage is in fact occurring.
- JAMM Transit will apply all legal and contract remedies available to it under federal, state and local law to ensure compliance with Part 26 requirements by all participants in the DBE program.
- JAMM Transit will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26, sections 103, 107 and 109.

Section 26.31 Directory

A statewide DBE Directory (available at www.okladot.state.ok.us) is maintained by ODOT on behalf of Oklahoma's Unified Certification Program (OUCP). The Directory identifies all firms that are eligible to participate as DBEs in this Program. The Directory, updated monthly, lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. The Directory may be provided upon request.

Section 26.33 Overconcentration

JAMM Transit has not identified that overconcentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

JAMM Transit has not established a business development program. We will re-evaluate the need for such a program every 18 months.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. We will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. We will consider similar action under our own legal authorities, including responsibility determinations in future contracts. Below lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
 - a. JAMM Transit has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:
 - i. Breach of contract action, pursuant to the terms of the contract;
 - ii. Breach of contract action, pursuant to [State Code Section X];
 - b. 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:
 - i. Suspension or debarment proceedings pursuant to 49 CFR part 26
 - ii. Enforcement action pursuant to 49 CFR part 31
 - iii. Prosecution pursuant to 18 USC 1001.
3. We will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by following the compliance and enforcement of the Oklahoma Department of Transportation, and will occur for each contract/project on which DBEs are participating.
4. We will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

Section 26.39 Small Business Participation

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

1. Establishing a race-neutral small business set-aside for prime contracts under a stated amount;
2. This will be proposed on a per fiscal year basis; and
3. DBELO, Counsel and Finance will participate
4. A reasonable number of prime contracts shall be made available for small businesses by taking a yearly assessment of contracts procurement.
5. This process will require INCA's Board of Directors approval.

Subpart C - Goals, Good Faith Efforts, and Counting**Section 26.43 Set-asides or Quotas**

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

Section 26.45 Overall Goals

JAMM Transit will adopt the methodology to calculate the overall goal used by ODOT's Transit programs Division which includes the following:

Amount of Goal

JAMM Transit will adopt the methodology to calculate the overall goal used by ODOT’s Transit Programs. In accordance with Section 26.45(f) the Transit Programs Division will submit its overall goal to DOT on a three (fiscal) year basis.

Methodology used to Calculate Overall Goal

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE’s was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing and able}}$$

The data source or demonstrable evidence used to derive the numerator was the ODOT DBE directory and “Tips for Goal-Setting in the Disadvantaged Business Enterprise (DBE) Program”. The data source or demonstrable evidence used to derive the denominator was the US Census Bureau (www.census.gov/econ/). When the numerator was divided by the denominator the base figure for the State’s overall goal is: 2.30%.

Step 2: 26.45(d)

Since the Oklahoma rural transit providers have not had any DBE participation during the past 2 years, the State has elected not to conduct a Step Two adjustment. Consequently, the Step One Base Figure will be used as the goal.

Public Participation

JAMM Transit published our goal information in these publications:

- All newspapers in counties encompassing our service area.

We have not received comments from these publications or by any other means.

In accordance with Section 26.45, the Transit Programs Division will submit its triennial overall DBE goal to FTA on August 1 of the year specified by FTA.

Section 26.53 Good Faith Efforts Procedures

JAMM Transit has adopted ODOT’s Good Faith Efforts Procedures, as outlined within ODOT’s “Disadvantaged Business Enterprises Program Guide”. Examples of good faith efforts are found in Appendix A to Part 26.

Section 26.55 Counting DBE Participation

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

Subparts D & E - Certification

Section 26.81 Unified Certification Programs

JAMM Transit is not a certifying agency. For information concerning certification, potential DBEs should refer to the ODOT DBE website at www.okladot.state.ok.us.

JAMM Transit is the member of a Unified Certification Program (UCP) administered by the Oklahoma Department of Transportation (OUCP). The OUCP will meet all of the requirements of

this section. JAMM Transit will use and count for DBE credit only those DBE firms certified by the OUCP.

Section 26.83-26.91 Procedures for Certification Decisions

JAMM Transit is not a certifying agency. For information about the certification process or to apply for certification, firms should refer to the ODOT DBE website at www.okladot.state.ok.us.

Any firm or complainant may appeal to the OUCP decision in a certification matter to DOT. Such appeals may be sent to:

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

Subpart F - Compliance and Enforcement

Section 26.109 Information, Confidentiality, Cooperation

We will safeguard from disclose 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, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without the written consent of the submitter.

Monitoring Payments to DBEs

JAMM Transit 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 JAMM Transit or DOT. This reporting requirement also extends to any certified DBE subcontractor.

JAMM Transit 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.

Dissemination of Policy

The policy will be made available through the agency's website. The agency will educate and train employees and supervisors regarding the policy and any conduct that could constitute a violation of the policy.