

submit a goal, however, it must meet all the requirements set forth in § 26.45. Of course, all recipients must still seek to meet the objectives of § 26.1 of this part.

There were no substantive comments on this section; therefore, we are not making any changes to this provision.

B. Technical Changes

Clarification Concerning Bidders Lists

Section 26.11(c) requires recipients to create and maintain a bidders list containing information about DBE and non-DBE contractors and subcontractors who seek work on a recipient's Federally-assisted contracts. The Department had received a number of questions regarding the appropriate method to collect the required information. Recipients had also expressed concern with collecting the annual gross receipts of firms, saying that firms sometimes have been reluctant to share this information.

In discussing this requirement in the DBE final rule, the Department recognized the difficulty in identifying subcontractors, particularly non-DBEs and all subcontractors that were unsuccessful in their attempts to obtain contracts. Consequently, the Department did not impose any procedural requirements for how the data are collected. The Department still believes that a recipient's data collection process should remain flexible. The IFR amended § 26.11(c) to emphasize the purpose of the bidders list and provide examples of ways in which recipients may choose to collect the required data.

The IFR amended § 26.11(c)(1) to state that the purpose of maintaining a bidders list is to provide the most accurate data possible about the universe of DBE and non-DBE contractors and subcontractors who seek to perform work under a recipient's Federally-assisted contracts for use in setting overall goals. The IFR also added language stating that a recipient may collect the required data from all bidders, before or after the bid due date. They may also choose to conduct a survey that will result in a statistically sound estimate of the universe comprised of DBE and non-DBE contractors and subcontractors who seek to perform work under the recipient's Federally-assisted contracts. Additionally, we clarified that the data need not come from the same source. For example, a recipient may collect name and address information from all bidders while conducting a survey with respect to age and gross receipts information. The Department continues to believe that the approach should remain flexible so that recipients can

choose the least burdensome and intrusive method.

With regard to a firm's annual gross receipts, the IFR amended the language in § 26.11(c) to clarify that recipients are not required to collect exact dollar figures from the bidders. Recipients may ask a firm to indicate into what gross receipts bracket they fit (*e.g.*, less than \$500,000; \$500,000–\$1 million; \$1–2 million; \$2–5 million; etc.) rather than requesting an exact figure from the firms. We note that this information on the financial size of a firm, as well as information collected about the firm's age, should be helpful to recipients in formulating narrowly tailored overall goals.

A few commenters stated that they do not use a firm's gross receipts or a firm's age in calculating their goals and therefore collecting this information should be optional. We believe that this information is a valuable way to measure the relative availability of ready, willing, and able DBEs, and we encourage recipients to utilize this in setting their goals. Use of this information will help recipients to ensure that their goal setting process is narrowly tailored. However, although this information is not required in setting goals, it is information that the Department is asked to provide periodically to Congress. Consequently, we will continue to require recipients to collect a firm's gross receipts and age for DBE and non-DBE contractors and subcontractors who seek to work on Federally-assisted contracts. This portion of the IFR is also being retained without change.

Clarification Concerning Monitoring and Counting DBE Participation

Section 26.37(b) requires recipients to have a mechanism to verify that the work committed to DBEs at contract award is actually performed by the DBEs. The language in the final rule states that recipients must provide for a running tally of actual DBE attainments. The preamble to the rule states, "Under the final rule, recipients would keep a running tally of the extent to which, on each contract, performance had matched promises." Verifying whether a DBE actually performed the work they were committed to necessarily requires the recipient to track both commitments and attainments.

The IFR reworded the language in § 26.37(b) to state that a recipient's DBE program must include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs. In addition, it added a new paragraph (c) to clarify that a recipient's mechanism

for providing a running tally of actual DBE attainments must include a means of comparing the attainments to commitments. It also clarified that both awards or commitments and attainments must be contained in a recipient's reports of DBE participation to the Department.

The few comments we received on this section questioned whether commitments and attainments could be reported together in a meaningful way without being misleading. We recognize that in many instances the awards and commitments reported will not correspond to the attainments reported on the same form. For example, if a contract is awarded to a DBE in August 2001, the award would be reflected in the report for that period, but the contract likely would not be completed for many years. Therefore, the actual achievements section in that report could not reflect the achievements on that contract. The Uniform Reporting Form in Section II of this document contains two separate sections in the form. The first section reflects contracts awarded or committed during the reporting period. The second section reflects actual payments on contracts completed during the reporting period. It is essentially a "snap-shot" of a recipient's progress towards the participation of DBEs in its DBE program, and is not a determinative factor as to whether or not DBE goals are being met.

One commenter requested that we provide guidance on how to track actual participation. The Department believes that a recipient's data collection process should remain flexible, and as such we are reluctant to tell recipients how to collect the information. As an example, many recipients track actual participation by obtaining certified statements from the prime contractor and then verifying the information with the DBEs.

The IFR also deleted and revised repetitive and misleading language. Section 26.37(b) requires the mechanism providing for a running tally of actual DBE attainments to include a provision ensuring that the DBE participation is credited toward overall or contract goals only when payments actually are made to DBE firms. Because this requirement was already stated in § 26.55(h), we have removed it from § 26.37(b). Furthermore, we believe that the wording of § 26.55(h) was confusing; therefore, we revised it. The point of the revised language is to emphasize that actual payment of committed funds to DBEs is a key element in determining whether a prime contractor has met its contract obligations.