

OFFICE OF CIVIL RIGHTS
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
DBE PROGRAM
FEDERAL TRANSIT ADMINISTRATION
AUGUST 2013

GOVERNMENT OF THE DISTRICT OF COLUMBIA
DEPARTMENT OF TRANSPORTATION



d. Office of the Director

**DISADVANTAGED BUSINESS ENTERPRISE
POLICY STATEMENT**

The District Department of Transportation (DDOT) as a recipient of federal funds through the Federal Highway Administration and the Federal Transit Authority shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any federal aid assisted contract, in the administration of its Disadvantaged Business Enterprise (DBE) program or in the requirements of 49 CFR Part 26 (**Final Rule, February 28, 2011**). DDOT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of federally assisted contracts.

It is the policy of DDOT to initiate actions to ensure that eligible DBE firms have an equal opportunity to participate in the performance of contracts fully and partially funded by the federal government. DDOT is committed to ensuring nondiscrimination, creating a level playing field on which DBEs can compete fairly for federally assisted contracts, ensuring the DBE program is narrowly tailored in accordance with all applicable laws, and ensuring that only DBEs who fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs on federally assisted contracts.

In accordance with 49 CFR Part 26, this policy is implemented by the use of an overall DBE contracting goal which is devised utilizing DDOT's actual contracting award dollars and the number of the potential DBEs available in the desired areas of expertise. The overall goal will be established yearly and will be applicable to DDOT's entire federally funded highway construction program. The DBE goal and Program will be reviewed for effectiveness periodically.

Responsibility for successful implementation of this DBE policy will reside directly with the DDOT Director and through delegation of authority to the Supervisory Compliance Officer who will serve as the DBE Liaison Officer and be responsible for implementing all aspects of DDOT's DBE Program.

DDOT recognizes that the success of its DBE Program will significantly contribute to the economic and social progress of the Washington, DC metropolitan area. As such, DDOT will make every effort to ensure the ongoing success of the program.

A handwritten signature in blue ink that reads 'Terry Bellamy'.

Terry Bellamy, Director
District Department of Transportation

**DISTRICT DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM PLAN**

TABLE OF CONTENTS

1. GENERAL REQUIREMENT

a. Objectives.....4
b. Applicability.....4
c. Definitions.....4
d. Non-Discrimination Requirements.....4
e. Record Keeping Requirements.....4
f. Federal Financial Assistance Agreement.....5

2. ADMINISTRATIVE REQUIREMENTS

a. DBE Program Updates.....6
b. Policy Statement.....6
c. DBE Liaison Officer.....8
d. DBE Financial Institutions.....9
e. Prompt Payment Mechanisms.....9
f. Directory.....10
g. Overconcentration.....11
h. Business Development Program.....12
i. Monitoring and Enforcement Mechanisms.....12
j. Small Business.....14

3. GOALS, GOOD FAITH EFFORTS AND COUNTING

a. Set Aside or Quotas.....17
b. Overall Goals.....17
c. Transit Vehicle Manufacturers Goals.....19
d. Break out of Estimate Race Neutral and Race Conscious Participation.19
e. Contract Goals.....20
f. Good Faith Efforts Procedures.....20
g. Counting DBE Participation.....24

4. CERTIFICATION STANDARDS

a. Certification Process.....26

5. CERTIFICATION PROCEDURES

a. Unified Certification Programs.....26
b. Procedures for Certification Decisions.....26
c. Denials of Initial Requests for Certification.....27
d. Removal of a DBE's Eligibility.....28

e. Certification of Appeals.....28

6. COMPLIANCE AND ENFORCEMENT

a. Information, Confidentiality, Cooperation.....28
b. Freedom of Information Act Requests.....29

ATTACHMENTS

Attachment 1 Organizational Chart
Attachment 2 DBE Directory
Attachment 3 Minority Financial Institutions
Attachment 4 Required Contract Provisions
Attachment 5 Commercial Useful Function Form
Attachment 6 Joint Check Arrangement Monitoring Form
Attachment 7 DBE Contract Payment Form & Instruction
Attachment 8 Overall Goal Calculations
Attachment 9 Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 10 Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 11 DBE Utilization Form
Attachment 12 Metropolitan Washington Unified Certification MOU
Attachment 13 Certification Application Forms
Attachment 14 Procedures for Removal of DBE's Eligibility
Attachment 15 Regulations: 49 CFR Part 26

SUBPART A - GENERAL REQUIREMENTS

Section 26.1 Objectives

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

Section 26.3 Applicability

DDOT is the recipient of federal-aid **Transit Authority** funds authorized under 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 and II, and V of the Teas-21, Pub. L 105-178.

Section 26.5 Definitions

DDOT will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

DDOT 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, DDOT 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

Reporting to USDOT: 26.11(b)

DDOT will report DBE participation to USDOT as follows:

DDOT will report DBE participation to FTA on a semi-annual basis, using the electronic Uniform Report of DBE Awards or Commitments and Payment form available in the FTA TEAM-Web system. This report is due each June 1 and December 1. The report must include DDOT and sub-recipient expenditures.

Bidders List: 26.11(c)

DDOT will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or submit quotes on USDOT-assisted contracts. The purpose of this list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our USDOT-assisted contracts for use in helping to set our overall goals. The requirement is to allow use of the bidders' list approach to calculate overall

goals. The bidders list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms. DDOT will collect this information in the following ways:

DDOT will compile a comprehensive listing of all bidders and contractors (DBEs and non-DBEs) actively involved in its contracting and procurement program over the last four years to determine the relative availability of firms “ready, willing, and able” to perform on forthcoming DDOT contracts.

Data is collected on all contractors and consultants, both prime contractors and subcontractors, who expressed interest, either by submitting a bid package or by submitting their name, to DDOT contracting since FY 2006.

Both DBE and Non-DBE contractor data will be captured from the following sources:

- Office of Contracting and Procurement (OCP) bidder’s list.
- All subcontractors who have attempted to participate as subcontractors on Department contracts and were identified as having submitted bids/quotes to prime contractors bidding on Department contracts.
- All local area engineering and highway related construction firms, suppliers, consultants, etc. certified by the Unified Certification Program (UCP) between DDOT and the Washington Metropolitan Transportation Authority (WMATA).
- The Associated Builders and Contractors (ABC) Metro Washington Chapter Directory.
- The U.S. Census County Business Pattern Database

(DDOT will obtain gross receipts information by asking each firm to indicate into what bracket it fits (e.g., less than \$500,000; \$500,000-\$1 million, \$2-5 million, etc.) rather than requesting an exact figure from the firm.)

DDOT will screen out firms located outside the Washington Metropolitan Area and those providing services unrelated to DDOT service areas based on the North American Industry Classification System 2007 (NAICS) codes.

Section 26.13 Federal Financial Assistance Agreement

DDOT has signed the following assurances, applicable to all USDOT-assisted contracts and their administration:

Assurance: 26.13(a)

DDOT 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. DDOT shall take all necessary and reasonable steps under **49 CFR Part 26** to ensure nondiscrimination in the award and administration of USDOT-assisted contracts (**See Attachment A-1**). DDOT'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 DDOT 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

DDOT will ensure that the following clause is placed in every USDOT-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 USDOT assisted contracts (**See Attachment A-1**). 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 DDOT deems appropriate.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

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

Section 26.23 Policy Statement

The Policy Statement is elaborated on the first page of this program.

In accordance with Section 26.23, DDOT's Policy Statement will be disseminated to the following individuals:

DDOT DBE POLICY STATEMENT MAILING LIST

- 1. Legion Design/Campbell Associates, Chartered**
4301 Connecticut Avenue N.W. Suite 240
Washington, D.C. 20008
Attention: Endrea Frazier, Vice President
Architect/Engineers Council, President
Phone: 202/833-4444
Email: endrea.frazier@legiondesign.com

- 2. Transportation Development Foundation**
Metropolitan Washington American Road & Transportation Builders Association
(ARTBA)
1219 – 28th Street N.W.
Washington, D.C. 20007
Attention: Hank Webster
Phone: 202/289-4434
E-mail: hwebster@artba.org
- 3. Progressive Transportation Services Administration (PTSA)**
District Department of Transportation (DDOT)
55 M Street S.E. 5th Floor
Washington, D.C. 20003
Attention: Carl Jackson, Director
Phone: 202/671-4617
E-Mail: carl.jackson@dc.gov
- 4. Business Opportunity Workforce Development**
District Department of Transportation
2311 Martin Luther King, Jr. Avenue S.E.
Washington, D.C. 20020
Attention: Linda Fennell, Manager DBE Supportive Services
Phone: 202/645-8620
E-mail: linda.fennell@dc.gov

Section 26.25 DBE Liaison Officer (DBELO)

DDOT has designated the following individual as our DBE Liaison Officer:

Ms. Lisa M. Gregory, Chief, Office of Civil Rights
District Department of Transportation
55 M Street, S.E., 3rd Floor
Washington, DC 20003
(202) 671-2628
Lisa.Gregory@dc.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that DDOT complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the agency Director concerning DBE program matters. An **organization 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 the DBE program, in coordination with other appropriate officials. The DBELO has a staff of six (6) to assist in the administration of the program. Their duties and responsibilities include the following:

1. Gather and report statistical data and other information as required by USDOT.
2. Review third party contracts and purchase requisitions for compliance with this program.
3. Work with all departments to set overall annual goals.
4. Ensure that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identify contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identify ways to improve progress.
6. Analyze DDOT's progress toward attainment and identify ways to improve progress.
7. Participate in pre-bid meetings.
8. Advise the CEO\governing body on DBE matters and achievement.
9. Chair the DBE Advisory Committee.
10. Participate in pre-bid meetings.
11. Provide DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plan and participate in DBE training seminars.
13. Certify DBEs according to the criteria set by DOT and act as liaison to the Uniform Certification Process in the District of Columbia.
14. Provide outreach to DBEs and community organizations to advise them of opportunities.
15. Maintain DDOT's updated directory on certified DBEs.

Other personnel responsible for DBE Program implementation:

Mohammed Kabir, PHR/Sr. EO Local and Federal Compliance Officer
Linda Fennell, Manager, DBE Supportive Services
Glenda Payne, Equal Opportunity/DBE Program Specialist
Luisa Portillo, Equal Opportunity/DBE Program Specialist
Jordyne Blaise, Esq. Title VI/VII Coordinator

Section 26.27 DBE Financial Institutions

It is the policy of DDOT 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 USDOT-assisted contract to make use of these institutions. DDOT has made the following efforts to identify and use such minority institutions. **Attachment 3:**

MINORITY FINANCIAL INSTITUTIONS

- 1) Independence Federal Savings Bank
1301 9th Street, N.W.
Washington, D.C. 20001
1-888-922-6537
www.ifsb.com
- 2) Industrial Bank
4812 Georgia Avenue, N.W.
Washington, D.C. 20011
(202) 722-2000
www.industrial-bank.com
- 3) The Harbor Bank
25 W. Fayette Street
Baltimore, Maryland 21201
(410) 528-1801
www.theharborbank.com
- 4) Advance Bank
4801 Seton Drive
Baltimore, MD 21215
(410) 358-1700
www.advancebanksus.com

Section 26.29 Prompt Payment Mechanisms

DDOT will include the following clause in each USDOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from DDOT. The prime contractor agrees further to return fifty percent (50%) of retainage payments to each subcontractor when the sub-contractor has completed 50% of the agreed upon work. Remaining retainage is to be returned to the sub-contractor within seven (7) 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 DDOT's Office of Contracting and Procurement. This clause applies to both DBE and non-DBE subcontracts.

Failure to do so shall be a ground for appropriate action against the party involved (e.g.; findings of non-responsibility for future contracts and/or suspension and debarment).

Retainage

In accordance with 49 CFR, Part 26, Section 26.29, DDOT has selected Option Three to hold retainage from the prime contractor and provide for prompt and regular incremental acceptances of portions of the prime contracts, and ultimate payment to the primes/subs based on those acceptances.

Option Three allows:

DDOT to hold retainage from prime contractors but make incremental inspections and approvals of the prime contractor's work at various stages of the project (DDOT would pay the prime contractor the portion of the retainage based on these approvals), and the prime contractor, in turn, would be required to promptly pay all retainage owed to the subcontractor for satisfactory completion of the approved work.

DDOT will require each of its sub-recipients to include the prompt language outlined above in all contracts and subcontracts as required by 49 CFR Part 26.29.

We will also require our sub-recipients to utilize a subcontractor payment form to monitor prompt payment compliance.

Section 26.31 Directory

DBE Directory:

Our DBE Directory is great resource for our Prime Contractors to identifying partners that are DBE Certificated with District Department of Transportation and Washington Metropolitan Area Transit Authority. Our DBE Directory is updated daily.

<http://ddotfiles.com/db/DBE/dbe.php>

If a proposed partner from the Prime Contractors is not in the DDOT DBE Directory. Please contact our office.

Luisa Portillo, Equal Opportunity/DBE Program Specialist

DDOT Office of Civil Rights
55 M Street, S.E., 3rd Floor
Washington, D.C. 20003
(202) 671-0630 Luisa.Portillo@dc.gov

Glenda Payne, Equal Opportunity/DBE Program Specialist

DDOT Office of Civil Rights
55 M Street, S.E., 3rd Floor
Washington, D.C. 20003
(202) 671-0479 Glenda.Payne@dc.gov

Section 26.33 Overconcentration

DDOT will conduct an annual review of its DBE firms during the contract year to determine whether or not overconcentration exists.

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

If DDOT does determine that its certified DBE firms are so over-concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in that type of work, the agency will devise appropriate measures to address the overconcentration and submit them for approval.

The measures may include, but are not limited to, the use of incentives, technical assistance, business development programs and other appropriate measures designed to assist DBEs in performing work outside the specific field in which non-DBEs are unduly burdened. It is not the intention of DDOT to establish or use a mentor-protégé program at this time.

If DDOT determines that there is over-concentration, measures as stated immediately above, the DBEs will not be used until they are approved by USDOT.

Section 26.35 Business Development Programs

The DDOT's business development program is conducted through the agency's Business Opportunity and Workforce Development Center (BOWDC), and provides supportive services to small business entrepreneurs, helping them successfully compete for procurement contracts in transportation construction. Guided by 49 CFR Part 26 Appendix, C the BOWDC provides subsidized long-term technical and financial supportive services to certified DBEs, including (but not limited to):

- A business listing in the DDOT DBE Website Directory;
- Monthly updates on current procurement opportunities and training activities with DDOT and partner agencies;
- Consulting services offering one-on-one assistance in developing business plans, identifying projects for bid, preparing cost analysis and competitive bids, developing marketing strategies; and finance, accounting, marketing and other business related fields.
- Referrals of experts who aid businesses obtain short-term or long-term financing.
- Training

Interested persons obtain information about the program through agency pamphlets, monthly newsletters and other outreach efforts by the DBE Supportive Services Manager, on the DDOT website, and at the BOWDC:

Business Opportunity and Workforce Development Center

District Department of Transportation
 2311 Martin Luther King, Jr. Avenue, SE
 Washington DC 20020
 Linda Fennell, Manager, DBE Supportive Services
 (202) 645-8620 linda.fennell@dc.gov

Section 26.37 Monitoring and Enforcement Mechanisms

DDOT will use the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

1. DDOT will bring to the attention of the US Department of Transportation/OIG any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the 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.
2. DDOT will consider similar action under our own legal authorities, including responsibility determinations in future contracts. **Attachment 4**
 - a. Breach of contract action, pursuant to the terms of the contract;
 - b. Withholding of partial estimates until compliance is achieved.

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:

- a. Suspension or debarment proceedings pursuant to 49 CFR, Part 26
 - b. Enforcement action pursuant to 49 FR Part 31
 - c. Prosecution pursuant to 18 USC 1001
3. DDOT 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 a multi-level process. First, the DBE Compliance Specialist will

meet with and educate the project engineer and project management team as to what DBEs are expected to work on each project, what tasks are expected to be completed, and for what sum of money. The DBE compliance specialist will then regularly attend progress meetings and receive bi-weekly reports from the field. The DBE compliance officer will additionally visit the project work site at times which, according to the on-site management team, the DBE firms are expected to be performing. The site visits will be unannounced and will be memorialized by the completion of a site visit report. Reports and photographs may be made available electronically to all members of the staff of the Office of Civil Rights. Additionally, the Office of Civil Rights will maintain regular communication with the DBE contractor and sub-contractor to inquire about work actually completed, and anticipated to be completed.

4. DDOT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award. Once every month, prime contractors shall submit copies of canceled checks, front **and** back paid to DBE firms, as verification that each firm has been paid in accordance with their contractual arrangement with the prime contractor. Periodically, DDOT may request that DBE firms complete a payment confirmation declaration, affirming that the DBE firm has, in fact, received payments committed to them at the time of contract award.
5. DDOT will provide written certification that it has reviewed records and monitored work sites in-state to ensure work committed to DBEs is actually performed by DBEs to which the work was committed.

Monitoring Payments to DBEs

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

DDOT 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. Prime Contractors are required to submit copies of cancelled check payments to DBEs on a monthly basis.

To obtain additional information on DBE Compliance, please contact the Office of Civil Rights

Mohammed Kabir, PHR/Sr. EO Local and Federal Compliance Officer
Office of Civil Rights
District Department of Transportation
55 M Street, SE, 3rd floor
Washington, DC 20003
(202) 299-2190 Mohammed.Kabir@dc.gov

49 CFR 26.39 SMALL BUSINESSES

DDOT will include a small business element to its DBE program to facilitate participation by small businesses generally not just DBEs.

Federal Disadvantaged Business Enterprise Small Business Program

The District of Columbia Department of Transportation (DDOT) is committed to fostering small business through meeting the requirements established in the U.S. Department of Transportation's 49 Code of Regulation (CFR) Part 26.39 as mandated in the Final Rule dated February 28, 2011.

The Disadvantaged Business Enterprise Program will include race neutral contracting requirements in an effort to facilitate competition by all small businesses to achieve the objectives of the program. For the purposes of implementing this program a Small Business is defined as a firm that:

- Is organized for profit;
- Has a place of business in the United States;
- Makes a significant contribution to the United States economy by paying taxes or using American products, services, materials and/or labor; and
- Does not exceed the numerical Size Standard (Table 1) for its industry as established by the U.S. Small Business Administration (SBA).

A small business may be a sole proprietorship, partnership, corporation, Limited Liability Corporation or any other legally formed entity.

Eligible firms are those small business concerns that have been certified by the SBA and can provide to DDOT a copy of their current SBA letter of certification attesting to their eligibility. The letter will act as an official document for participation in the Program. Additionally, this information will be verified by utilizing SBA's on-line directory and the Contractor's Central Registration System.

Small businesses are classified through standards promulgated by the SBA. SBA uses the North American Industry Classification System (NAICS) to identify different industries, services, commodities and products. Size Standards indicate the largest size that a business may be to classify as a small business for federally funded contracting opportunities.

(Table 1- SBA General Size Standards)

Example: A business in one of the following industry groups is small if its size is not greater than:

Industry Group	Size Standard
Water, Sewer Line and Related Structures	\$33.5 million
Heavy Highway, Bridge & Civil Engineering	\$33.5 million
Poured Concrete Foundation and Structure Contractors	\$14.0 million
Structural Steel and Precast Concrete Contractors	\$14.0 million

Electrical Contractors & Other Wiring Installation Contractors	\$14.0 million
Painting Contractors	\$14.0 million
Site preparation Contractor (Demolition/Excavation Contractors)	\$14.0 million
Ready-mix Concrete/Asphalt Mixture Manufacturing	500 Employees
Brick, Stone, and Related Construction Material Merchant Wholesalers	100 Employees
Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	100 Employee
General Freight Trucking, Local (Hauling)	\$25.5 million
Engineering/Architect Services	\$4.5 million
Administrative Management and General Management Consulting Services	\$7.0 million
Landscaping Services	\$7.0 million
<u>Small Business Size Standards matched to NAICS</u>	
Specific size standards for Small Business in procurement solicitations should be cross referenced to the SBA website: (http://sba.gov/category/navigation-structure/contracting-officials/eligibility-size-standards).	

DDOT is committed to the utilization of small businesses and affording said businesses the maximum opportunity to participate and compete in DDOT's procurement opportunities. In order to facilitate competition and maximize participation by small businesses, the following steps will be implemented to reduce obstacles to small business participation in DDOT contracting opportunities:

1. Avoid unnecessary and unjustified bundling of contract requirements;
2. Utilize DDOT's fiscal year budgetary planning to develop small business utilization for upcoming contracting opportunities;
3. Establish a team to diligently facilitate contracting opportunities, awareness and recognition of the critical role that small businesses play in advancing DDOT's procurement activities;
4. Train all DBE program employees to be an integral part of DDOT's procurement practices, acting in partnership to develop strategies for increased use of small business firms in support of DDOT's mission;
5. Foster through the team, an environment that encourages commitment, the use of integrated systems, professional management tools, and pursue innovative solutions in support of small business concerns;
6. Identify small business opportunities within the established threshold on a contract-by-contract basis on USDOT assisted construction contracts and on non-construction procurements (i.e. contracts for services, supplies, and equipment) having a total value not to exceed \$1,000,000). The threshold may be satisfied by utilizing one or more

small business concerns as primes or subcontractors or suppliers of goods and services, provided the small business performs a minimum of 51% of the tasks pursuant to the awarded contract. Threshold utilization will be used only when three or more self-certified small businesses are classified by the NAICS code for the required contract solicitation. However, DDOT will not use small business participation when a DBE goal is considered to be in the best interest of DDOT to satisfy the contract solicitation requirement. DBE goals and small business threshold will not be used for contract solicitations simultaneously;

7. Coordinate with Program Managers and or COTR to monitor payments to prime small business contractors by (a) reviewing letters of intent and subcontractor schedules of participation to assess the tasks awarded and dollar value involved; (b) maintain a reconciled running tally of payments for the duration of the work to be performed by subcontractors; (c) require prime small business contractors to submit notification of payments of their subcontractors on a monthly basis or as is appropriate considering the type of work being performed or the relevant length of the contract in question. In any event, the notification shall be made to DDOT's Office of Procurement – DBE Liaison at the time of the actual payment by the prime small business concern to the subcontractors; (d) require all subcontractors to provide notification, to DDOT's Office of Procurement - DDOT's DBE Liaison, of receipt of payment from the prime small business concern contractors at the time that payment is actually received; (e) review the prime small business contractors' payment documents and subcontractor receipt of payment documents; (f) verify payment and receipt of payment as required and (g) credit small business concern participation toward the contract threshold only when payments are actually made to small businesses.
8. Develop an electronic system that will enable appropriate monitoring and reporting;
9. Report to USDOT- FHWA small business participation including payments actually made to small businesses on USDOT assisted contracts, when required;
10. Provide training to all DDOT officers, managers and supervisors to fully cooperate with the Office of Procurement-DBE Liaison in the implementation of the Program. All individuals shall be held accountable for their performance in this area. Representatives from the DDOT's DBE team, Office of the General Council, Office of Finance and the Department of Engineering will be included in the process for potential contracting opportunities;
11. DDOT will implement extensive outreach activities and develop new partnerships to provide technical assistance and financial institutions such as: The Industrial Bank of Washington, the National Community Reinvestment Coalition and the U.S. Small Business - Small Business Resource Centers;
12. Make available an updated on-line directory identifying all firms eligible to participate as small business concerns in the Program. The listing for each small business concern shall include its company name, address, contact person, email address, telephone/facsimile and NAICS Codes describing types of work the firm has been certified to perform. These directories will be made available at the following website: <http://ddot.dc.gov/dbe>.
13. DDOT will ensure that implementation; monitoring and enforcement mechanisms are in place to verify that the work committed to small business concerns at contract award is actually performed by small businesses. All prime small business

contractors shall submit monthly progress reports on small business utilization to the DDOT's Office of Procurement- DBE Liaison on a form provided by the Office of Procurement and Materials for this purpose. Enforcement measures may include rescission of contract awards (in whole or in part), administrative fines, debarment from bidders' lists, suspensions from awards, sanctions, referral to appropriate federal authorities in instances of suspected fraud, misrepresentation, misappropriation of funds, theft of services and other activities that warrant criminal referrals or other action; and other appropriate administrative actions.

14. On contracts that do not include DBE contract goals, small business firms will be utilized in contracting opportunities as prime contractors who will also provide subcontracting opportunities to another small business firm that meet the designated size standard requirements and can reasonably perform, rather than self- perform all the work involved.
15. Identify alternative acquisition strategies and structure procurements to facilitate the ability of consortia or joint ventures by consisting small businesses, including DBEs, to compete for and perform as prime contracts.
16. The Program will work to combine and consolidate with DDOT's currently established Small Business & Local Preference Program.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

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

Section 26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f) DDOT will submit its overall goal to DOT on August 1 triennially in accordance with the FTA's schedule for Group B. Before establishing the overall triennial goal, DDOT will consult with DBE stakeholder groups in the Metropolitan Washington business community, such as the Metropolitan Washington Chapter of the National Association of Minority Contractors (NAMC), Washington, DC Chapter of the Conference of Minority Transportation Officials (COMTO), the Greater Washington Hispanic Chamber of Commerce, National Association of Women Business Owners -- Greater DC, the Metropolitan Washington Chapter, American Road & Transportation Builders Association (ARTBA), other community-based organizations and other interested parties to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and DDOT's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and DOT will accept comments on the goals for 45 days from the date of the notice. In addition to publishing the notice of proposed overall goals on the agency's website, DDOT publishes the notice of proposed overall goals in the following print media outlets:

- Afro-American Newspaper;
- India Globe/Asia Today
- Kaggwa Communications/The District Chronicles
- The Washington Examiner
- The Washington Hispanic
- The Washington Informer
- The Washington Times

Normally, we will issue this notice by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

Our overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

We will begin using our overall goal on October 1 of each year, unless we have received other instructions from DOT. If we establish a goal on a project basis, we will begin using our goal by the time of the first solicitation for a DOT-assisted contract for the project.

Section 26.47

DDOT understands that failure to meet the overall goal is not grounds for penalty if the DBE program was administered in good faith.

If the awards and commitments shown on DDOT's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, DDOT must do the following in order to be regarded by the Department as implementing the agency's DBE program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;
- (3)(i) Submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval.

If DDOT's Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA demonstrates that current trends make it unlikely that the agency will achieve DBE awards and commitments that would be necessary to allow DDOT to meet its overall goal at the end of the fiscal year, FTA, as applicable, may require DDOT to make further good faith efforts, such as by modifying the race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Section 26.49 Transit Vehicle Manufacturers Goals

DDOT 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. Alternatively, DDOT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

Section 26.51: Breakout of Estimated Race-Neutral Race Conscious Participation

Race-Neutral & Race Conscious Participation

DDOT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation. DDOT uses the following race-neutral means to increase DBE participation:

DDOT estimates that, in meeting an overall goal of **11.5%**, the agency will obtain **10%** from race-neutral participation and **1.5%** through race-conscious measures.

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

In order to ensure that the DDOT DBE program will be narrowly tailored to overcome the effects of discrimination, if the agency uses contract goals, DDOT will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and DDOT will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

DDOT will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

Section 26.51(d-g) Contract Goals

DDOT will use contract goals to meet any portion of the overall goal DDOT 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.

DDOT currently sets a goal on the total estimated dollar value of the contract, if the project receives **Federal Transit Authority** funds. DDOT does not set goals exclusively on the **Federal Transit Authority** portion, but in the future DDOT will consider calculating contract goals as a percentage of the total amount of USDOT-assisted contracts

DDOT will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. We 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 to Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation.

The breakout of estimated race-neutral and race-conscious participation can be found in **Attachment 10** to this program. This section of the program will be updated triennially when the goal calculation is updated.

Section 26.53 Good Faith Efforts

Documentation of Adequate Good Faith Efforts

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26 and are listed below.

In accordance with 49 CFR part 26.53, bidders who are unable to document that it has obtained enough DBE participation to meet the goal, must provide documentation showing that it made adequate good faith efforts to meet the goal, even though it did not succeed.

1. Demonstrating good faith efforts means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

The following is a list of types of actions which will be considered as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- 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 must solicit this interest

within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals 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 force.
 - 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.
 - (a) Negotiating in good faith with interested DBEs. It is the bidder'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.

(b) A bidder 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 failure to meet the contract DBE 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 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.
2. 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 vs. 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.
 3. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
 4. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

5. 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 following personnel 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:

Robert Ballard, Chief Procurement Officer
District Department of Transportation

Lisa M. Gregory, Esq., Chief,
Office of Civil Rights
District Department of Transportation

DDOT will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before the agency commits to the performance of the contract by the bidder/offeror.

Information to be submitted (26.53(b))

DDOT treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility.

Each solicitation for which a contract goal has been established will require the bidders/offerors to submit the following information to the DBELO:

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 participating;
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 contractors commitment and
6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 5 business days of being informed by DDOT that it is not responsive because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Ms. Lisa M. Gregory, Chief, Office of Civil Rights
District Department of Transportation
55 M Street, SE, 3rd floor
Washington, DC 20003
(202) 671-2628
Lisa.Gregory@dc.gov

The reconsideration official will not have played any 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 DDOT's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. DDOT will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

Good Faith Efforts when a DBE is replaced on a contract (26.53(f))

DDOT will require a 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. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

In this situation, we will require the prime contractor to obtain our prior approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, our contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding. **(See Attachment 10)**

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 DDOT 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/offerors, including those who qualify as a DBE. A DBE contract goal of ____ percent 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.

It is currently DDOT's policy to announce the goal in the RFP. In the event that DDOT misses the opportunity to set the goal before the RFP is advertised, the public is advised that there will be a goal and the numerical goal is announced in the pre-bid meeting or by amendment to the RFP.

Section 26.55 Counting DBE Participation

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

DBE Approval

Every DBE proposed for use on a contract towards meeting a DBE goal, requires approval by the DDOT OCR. Criteria for approval of participation of a DBE includes that they shall be certified under the MWUCP either with DDOT or WMATA. Work codes, or if not applicable, NAICS codes or business descriptions which are consistent with the work activities being performed under the contract and provide a commercially useful function will be considered during the DBE approval process.

DBE Participation

DBE participation is credited using the following procedures. For construction contracts, refer also to the current DDOT Standard Specifications.

- 1) Only the work actually performed by a DBE will be counted towards DBE attainments (49 CFR§ 26.55). All work performed by a certified DBE firm will be counted as long as the DBE performs a Commercially Useful Function (CUF). The cost of supplies and materials obtained by the DBE or equipment leased (except from prime contractor or its affiliate), and used directly in the performance of the work (not overhead) will also be counted.
- 2) Work that a DBE prime subcontracts to a non-DBE firm, does not count towards the DBE goal.
- 3) If materials or supplies are obtained from a DBE manufacturer, one hundred percent (100%) of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, sixty percent (60%) of the cost will be counted. If services are

brokered or materials or supplies are purchased from a broker, only the brokerage fee will be credited.

- 4) The entire amount of fees or commissions charged by a DBE for providing a service such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract will be counted towards the DBE goal, provided the fee is consistent with fees for that industry and geographical area.
- 5) Equipment rental firms: equipment that is owned leased or rented and operated by the DBE's employees or another DBE qualifies for 100% credit.
- 6) Prime/DBE Joint Venture: The contractor may count toward its DBE goal only that portion of the work that the DBE firm actually performs with its own forces. Should the joint venture be comprised of DBEs only, the entire contract award amount shall be counted toward meeting the DBE assigned goal on the project.
- 7) DBE credit towards an overall goal shall be counted, but shall not be attainment until the DBE actually receives payment from the prime. Documentation must be maintained (as part of the contract records) showing the participation by and payments to all DBEs on all contracts. Additionally, DBE participation that is attained and paid for after the certification of the DBE has been removed or expired during the performance of a contract shall not be included.

Commercially Useful Function (CUF) Reviews

CUF Reviews are for the purpose of reviewing DBEs for compliance with the Commercially Useful Function (CUF) requirements. A CUF must be performed for each DBE on a federally assisted project and should be conducted when the DBE is on-site and working. A CUF must be performed throughout the course of a project.

To obtain additional information on DBE Compliance, please contact the Office of Civil Rights

Mohammed Kabir, PHR/Sr. EO Local and Federal Compliance Officer

Office of Civil Rights

District Department of Transportation

55 M Street, SE, 3rd floor

Washington, DC 20003

(202) 299-2190 Mohammed.Kabir@dc.gov

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 - 26.73 Certification Process

DDOT will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. DDOT will make our certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact:

Mrs. Glenda Payne, Equal Opportunity, Certification Specialist
District Department of Transportation
55 M Street S.E. Third (3rd) Floor
Washington, DC 20003
202-671-0479 glenda.payne@dc.gov

Luisa Portillo, Equal Opportunity, Certification Specialist
District Department of Transportation
55 M Street S.E. Third (3rd) Floor
Washington, DC 20003
202-671-0630 Luisa.Portillo@dc.gov

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 2 DDOT is a member of the **Metropolitan Washington Unified Certification Program (MWUCP)**. DDOT is a partner with the Washington Metropolitan Washington Area Transit Authority (WMATA).

The rules that govern DDOT's MWUCP are in **Attachment 12** The MWUCP follows all certification procedures; cooperates fully with oversight review and monitoring activities of the UCP. The UCP also implements USDOT directives and guidance, and includes an implementation schedule to ensure the MWUCP is fully operational.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

We will review the eligibility of DBEs that we certified under former part 23, to make sure that they will meet the standards of Subpart E of Part 26. We will complete this review no later than three years from the most recent certification date of each firm. Our schedule for this review process will be:

For firms that we have certified or reviewed and found eligible under part 26, we will again review their eligibility on the anniversary date every three years and not to exceed six (6) years. These reviews will include the following components

- (1) An on-site visit to the offices of the firm.
- (2) If the firm is a corporation, analyze the ownership of stock in the firm;
- (3) Analyze the bonding and financial capacity of the firm;
- (4) Determine the work history of the firm, including contracts it has received and work it has completed;
- (5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
- (6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program.

“No Change” Affidavits and Notices of Change (26.83(j))

We require all DBEs to inform us, in a written affidavit, of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership or control criteria of 49 CFR Part 26 or of any material changes in the information provided with DDOT’s application for certification.

We also require all owners of all DBEs we have certified to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of 26.83(j). The test of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [*name of DBE*]’s application for certification, except for any changes about which you have provided written notice to the [*Recipient*] under 26.83(j). [*Name of firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$16.6 million.

We require DBEs to submit with this affidavit documentation of the firm’s size and gross receipts.

We will notify all currently certified DBE firms of these obligations through electronic notification 30-90 days prior to their anniversary date. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g. personal net worth), the obligation to submit a notice of change applies.

Section 26.85 Denials of Initial Requests for Certification

If we deny a firm's application or decertify it, it may not reapply until one (1) year has passed from our action.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. Attachment 9 to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, we have determined that a decertification panel comprised of DDOT and WMATA personnel who are knowledgeable of the regulations will conduct an informal hearing and serve as the decision-maker in de-certification proceedings. We have established an administrative "firewall" to ensure that the certification panel will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

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

Department of Transportation
Office of Civil Rights Certification Appeals Branch
400 7th Street, SW
Room 2104
Washington, D.C. 20590

We will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting (e.g., certify a firm if DOT has determined that our denial of its application was erroneous).

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.

FREEDOM OF INFORMATION ACT REQUESTS

The District of Columbia Freedom of Information Act, or FOIA, DC Code §§ 2-531-539, provides that any person has the right to request access to records. All public bodies of the District government are required to disclose public records, except for those records, or portions of records, that are protected from disclosure by the exemptions found at **DC Code § 2-534**.

A FOIA request may be made for any public record. This does not mean, however, that the public body will disclose every record sought. Statutory exemptions authorize the withholding of certain public records. When the public body does withhold records or portions of records, it must specify which exemption of the FOIA permits the withholding. FOIA does not require agencies to do research, to analyze data, to answer written questions, or to create records in order to respond to a request. FOIA only requires the agency to make a reasonable effort to locate already existing records.

The FOIA Officer is the principal contact point within DDOT for advice and policy guidance on matters pertaining to the administration of the FOIA. All requests are handled professionally and expeditiously.

FOIA requests may be oral or in writing. If the request is written, the envelope shall prominently be marked "FOIA Request." The FOIA Officer may request that an oral request be reduced to writing, if the requested records are not customarily made available by the public body.

For more information on how to file an FOIA request, visit the Government Resource Center.

FOIA Officer

Nana Bailey-Thomas
DDOT
55 M Street, SE, Suite 700
Washington , DC 20003
nana.bailey@dc.gov
Phone: (202) 673-6593
Fax: (202) 673-2355

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

We 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 make available for inspection upon request by any authorized representative of DDOT or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

We 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.

To obtain additional information on DBE Compliance, please contact the Office of Civil Rights

Mohammed Kabir, PHR/Sr. EO Local and Federal Compliance Officer

Office of Civil Rights

District Department of Transportation

55 M Street, SE, 3rd floor

Washington, DC 20003

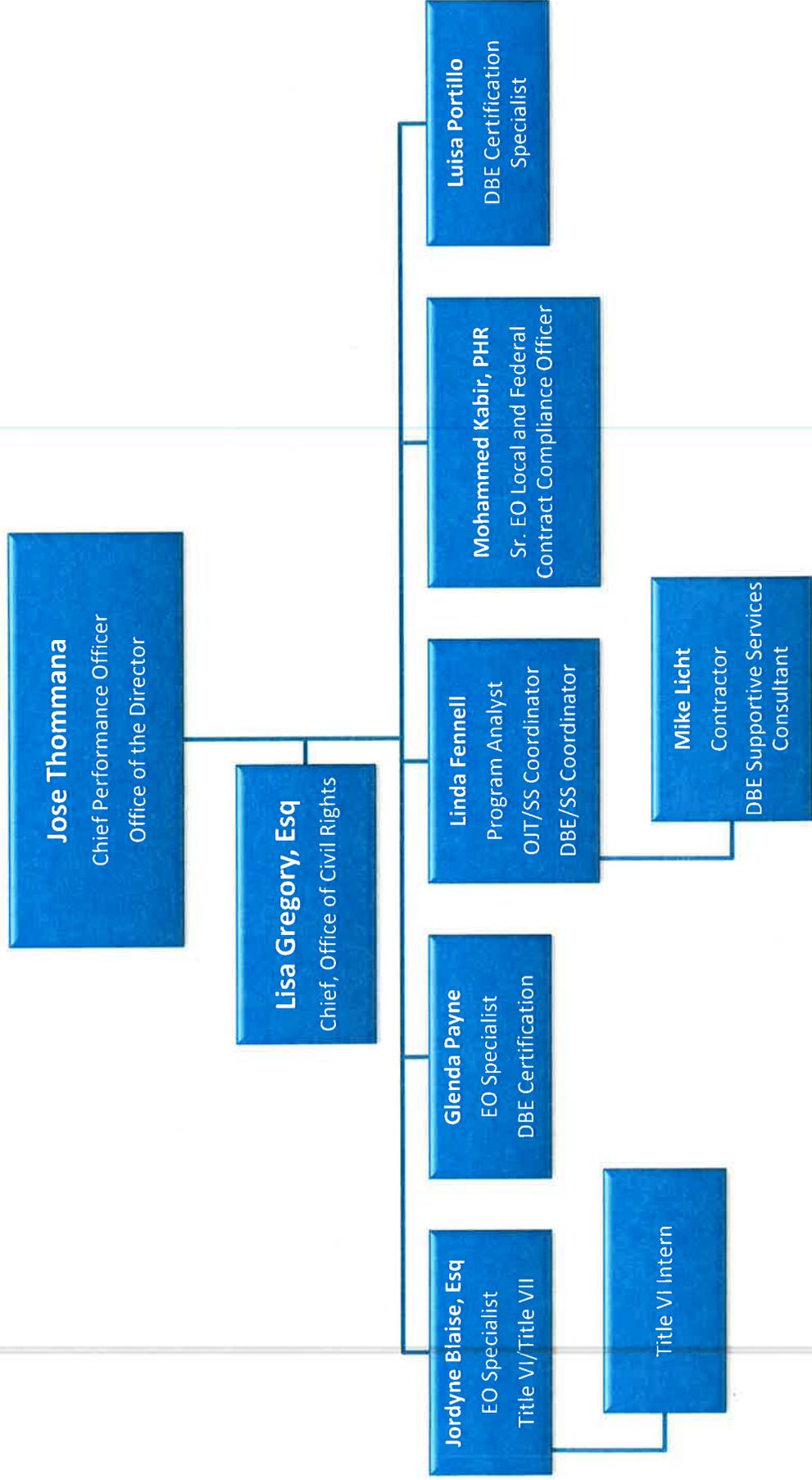
(202) 299-2190 Mohammed.Kabir@dc.gov

ATTACHMENT

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Minority Financial Institutions
Attachment 4	Required Contract Provisions & Monitoring
Attachment 5	Commercial Useful Function Form
Attachment 6	Joint Check Arrangement Monitoring Form
Attachment 7	DBE Contract Payment Form & Instruction
Attachment 8	DBE Utilization Form & Instruction
Attachment 9	Overall Goal Calculation
Attachment 10	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 11	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 12	Metropolitan Washington Unified Certification MOU
Attachment 13	Certification Application Forms
Attachment 14	Procedures for Removal of DBE's Eligibility
Attachment 15	Regulations: 49 CFR Part 26

**ATTACHMENT 1
ORGANIZATIONAL CHART**

District Department of Transportation Office of Civil Rights Organizational Chart



ATTACHMENT 2

DBE DIRECTORY

DDOT DBE DIRECTORY

Our DBE Directory is great resource for our Prime Contractors to identifying partners that are DBE Certificated with District Department of Transportation and Washington Metropolitan Area Transit Authority. Our DBE Directory is updated daily.

<http://ddotfiles.com/db/DBE/dbe.php>

If a proposed partner from the Prime Contractors is not in the DDOT DBE Directory. Please contact our office.

Luisa Portillo, Equal Opportunity/DBE Program Specialist

DDOT Office of Civil Rights
55 M Street, S.E., 3rd Floor
Washington, D.C. 20003
(202) 671-0630
Luisa.Portillo@dc.gov

Glenda Payne, Equal Opportunity/DBE Program Specialist

DDOT Office of Civil Rights
55 M Street, S.E., 3rd Floor
Washington, D.C. 20003
(202) 671-0479
Glenda.Payne@dc.gov

ATTACHMENT 3

MINORITY FINANCIAL INSTITUTIONS

MINORITY FINANCIAL INSTITUTIONS

- 1) Independence Federal Savings Bank
1301 9th Street, N.W.
Washington, D.C. 20001
1-888-922-6537
www.ifsb.com
- 2) Industrial Bank
4812 Georgia Avenue, N.W.
Washington, D.C. 20011
(202) 722-2000
www.industrial-bank.com
- 3) The Harbor Bank
25 W. Fayette Street
Baltimore, Maryland 21201
(410) 528-1801
www.theharborbank.com
- 4) Advance Bank
4801 Seton Drive
Baltimore, MD 21215
(410) 358-1700
www.advancebanksus.com

ATTACHMENT 4

REQUIRED CONTRACT PROVISIONS AND MONITORING

DBE Federal-Aid Contract Provisions Supplemental Information

1. Statement of Non-Discrimination

In accordance with 49 CFR, Part 26.13, the following statement must be included in every contract between DDOT and a contractor and in every subcontract of the contract:

“The contractor, sub recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in performance of this contract. The contractor shall carry out applicable requirements of 49 CFR, Part 26 in the award and administration of the USDOT- **Federal Transit Authority** 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 DDOT deems appropriate.”

2. Allowable Sanctions as a Result of Non-Compliance

If the DDOT uncovers any willful non-compliance by a prime or DBE subcontractor as it applies to the requirements of this program, the DBE Program may initiate sanctions as set out below:

Sanctions against DBE

If a DBE is found to be willfully non-compliant, the DDOT will notify the DBE of the sanctions to be imposed, which may include suspension, decertification or debarment. The sanction notice will inform the DBE that it may notify the DDOT within fifteen (15) days to request a hearing to show proof that the determination was incorrect. If no request is made within fifteen (15) days, the penalty becomes final. If a hearing is requested, the penalty does not become final until the DDOT renders its decision. The Department's decision will set forth the reasons relied upon in making the decision to the U.S. Department of Transportation. If DDOT chooses to proceed in the removal of DBE certification eligibility, the Department will follow the steps outlined in 49 CFR, Part 26.87.

Sanctions against Prime Contractor/Consultant

Prime Contractors and Consultants are advised that failure to meet the contract DBE goals due to circumstances within their control will subject them to sanctions which may include financial assessments, probation, suspension, disqualification, debarment and criminal prosecution, or a combination thereof. Circumstances are within the control of the Prime Contractor or Consultant. Examples of circumstances out of the control of the Prime Contractor or Consultant include DDOT-imposed elimination of contract items or reduction of quantities, abandonment of the work by the DBE firm, etc. If a Prime Contractor or Consultant fails to meet the stated DBE goal on a contract due to circumstances within his or her control, DDOT may calculate the value of the work that would have been performed by the DBE in the absence of the willful violation of the

contract. The Prime Contractor or Consultant may be required to reimburse the DBE for the calculated value of the lost work.

In addition to the administrative remedies listed above, willful violators of the DBE Program shall also be subject to the following actions:

- Withholding progress payments
- Cancellation of the contract
- Removal of the prime contractor or consultant from the pre-qualified list for a specified period of time, as determined by DDOT
- Suspension and debarment of the prime contractor or consultant for egregious or repeated violations of the DBE regulations, falsifications, or misrepresentations.
- Referral for criminal prosecution

DDOT will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the 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. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

3. Joint Check Approval Requirements

Joint Check means payment of a balance due by a check issued to two or more payees. Typically used when a general contractor unilaterally issues a joint check to a subcontractor and its supplier.

DDOT's position stands that Federal Transit Authority (FTA) will not object to the use of joint checks when the following conditions are met:

- (1) The second party (typically the prime contractor) acts solely as a guarantor,
- (2) The DBE must release the check to the supplier,
- (3) The use of joint checks is a commonly recognized business practice in the industry,
- (4) DDOT approves the practice before it is used, and
- (5) DDOT monitors its use closely to avoid abuse.

DDOT must conform to each of the above conditions in order to apply the amount paid by joint check to towards a DBE participation goal.

Prime contractors and DBEs wishing to use joint check arrangements must submit a request in writing prior to starting work. Prior approval must be obtained from DDOT Office of Civil Rights. Submit the Joint Check request form to the Office of Civil Rights. See sample DBE Joint Check Request form in Appendix A.

This request must include the following:

The actual document requesting the arrangement, i.e., the original request presented from the DBE vendor, or DBE.

The Joint Check Arrangement Monitoring form should be completed and maintained throughout the joint check arrangement. See the attached DDOT Joint Check Arrangement Monitoring form in the Appendix A.

Please be advised of the following:

- 1) A written joint check agreement among the parties (including the suppliers concerned) should provide full and prompt disclosure of the expected use of joint checks. The agreement should contain all information concerning the parties' obligations and consequences or remedies if the agreement is not fulfilled or a breach occurs.
- 2) Prime contractors and DBE subcontractors must avoid exclusive relationships concerning the use of joint checks. If a prime contractor makes joint checks available to one DBE subcontractor, the service should be made available to all subcontractors (DBEs and non-DBEs).
- 3) Prime contractors and DBE subcontractors that make use of joint checks should limit the use to the procurement of materials needed for a particular purpose at a particular time. Long-term or open-ended joint checking arrangements may suggest a lack of independence for the DBE involved, and are a basis for further scrutiny by DDOT.
- 4) DDOT reserves the right to establish reasonable durational limits on joint checking arrangements that are subject to periodic review and renewal to ensure that the arrangement is not operating in a way that compromises the independence of the DBE.
- 5) DBE contractor must retain final decision-making responsibility concerning the procurement of materials and supplies, even when joint checks are involved. The relationship between the DBE and supplier should be established independently and without interference by the prime contractor. The rights of parties to a joint check arrangement prime contractor has the right to terminate the arrangement unilaterally, a DBE subcontractor shall have the same right.
- 6) Joint checks issued by the prime contractor must be delivered or mailed to the DBE for presentation and payment to the DBE's suppliers. The prime contractor should not make payment directly to the supplier.

4. Termination for Good Cause Only

Effective February 28, 2011

Prime contractors may not terminate for convenience a DBE that it relied upon to obtain the contract without; good cause and DDOT written approval

WHAT CONSTITUTES GOOD CAUSE?

- DBE fails or refuses to sign contract
- DBE fails or refuses to perform to normal industry standards
- DBE fails to meet prime's reasonable bond requirements
- DBE goes bankrupt
- DBE is suspended or debarred (ineligible for fed. contracts)
- DBE is not a responsible contractor (in opinion of recipient)
- DBE voluntarily withdraws
- DBE is ineligible to receive DBE credit for work type
- DBE death or disability
- Other documented good cause

WHAT DOES NOT CONSTITUTE GOOD CAUSE

- Prime wants to self-perform the work
- Prime wants to substitute with another DBE or non-DBE subcontractor
- Prime contractor makes it impossible for DBE to perform its work in an acceptable Manner.

REQUEST TO TERMINATE FOR GOOD CAUSE

- Prime gives written notice to DBE of intent to terminate with copy to DDOT
- DBEs have 5 days to respond to notice and explain why it objects and why DDOT should not approve prime's request (shorter period if public safety involved)
- Applies to post-awards and pre-award deletions and substitutions.

ATTACHMENT 5

**COMMERCIALLY USEFUL FUNCTION
(CUF) On-Site Review Form**



responsibilities by performing, managing, and supervising the work. Primary areas in assessing Commercially Useful Function (CUF) include:

MANAGEMENT

- Is the DBE scheduling work operations?
- Is the DBE ordering equipment and supplies?
- Is the DBE preparing and submitting certified payroll forms?
- Is the DBE responsible for hiring and firing employees?

(If no, further inquiry is required to assess if the DBE is separate and independent from the prime contractor.)

WORKFORCE

- Are employees moving between the DBE and the prime contractor?
- Are employees listed on the DBE and prime contractor's payroll?
- Does the DBE share office space with the prime contractor?
- Is there a discrepancy between the company identification badge and the information provided by the employee during labor interviews?

(If yes, further inquiry and follow-up are required to determine if the DBE is managing its own workforce.)

EQUIPMENT

- Who is the owner of the equipment?
- Observe equipment and assess signage. Is there a sign over an original sign?
- Who is operating the equipment? Is the operator an employee of the DBE?
- What is reflected in the daily notes? Does the inspector identify the equipment used by the DBE?

(If it is not clear that the DBE has control over equipment, further inquiry and follow-up is required.)

MATERIALS

- Did the DBE order its own materials?
- Are invoices for materials and supplies addressed to the DBE?
- Who paid for the materials? Is payment made by a joint check, bearing the DBE and prime contractor's signatures?

(If it is not clear that the DBE is responsible for ordering materials and supplies, further inquiry and follow-up is required.)

PERFORMANCE

- Does the DBE have a contract with the prime contractor?
- Has the DBE performed 30% of the overall contract?
- Is a portion of the DBE's work performed by the prime contractor or any other companies?

(If it is not clear that the DBE is performing the work specified in the agreement with the prime contractor, further inquiry and follow-up is required.)



District Department of Transportation

Office of Civil Rights

**Disadvantaged Business Enterprise Program
Commercially Useful Function (CUF) On-Site Review**

This purpose of this form is to review Disadvantaged Business Enterprise (DBE) compliance with the **Commercially Useful Function (CUF)** requirements of 49 CFR, Part 26. The CUF review should be completed when the DBE is initially on the project, during the peak period of the DBE's work and when there are changes in the DBE's work performance. The CUF review should be completed through on-site observations, documentation review, and interviews with contractor's personnel. Additional sheets can be used if needed.

Prime Contractor:	Federal Aid Number:
DBE Subcontractor:	Contract Number :
Project (Name): Reconstruction and Resurfacing of New Hampshire Avenue	Date of On-Site Visit:

DBE's work observed on this date:

Item Number (if applicable)	%Complete	Item Description	Dollar Amount

2. DBE Subcontractor's Start Date:	3. DDOT Contract % Complete:	4. Anticipated Completion Date:
------------------------------------	------------------------------	---------------------------------

5. Do the DBE's employees receive work assignments from the DBE's Superintendent/Foreman?

6. Is the Superintendent/Foreman employed exclusively by the DBE contractor?	6a. If no, please explain:
--	----------------------------

7. Is the DBE's Superintendent/Foreman shown on the DBE's payroll?

8. Is the Superintendent / Foreman shown on any other contractor's payroll?	8a. If yes, please explain:
---	-----------------------------

9. List names and crafts of DBE's work crew as observed (use additional sheets, if needed).

10. Are any crew members on the Prime or any other subcontractor's payroll(s)?	10a. If yes, please identify:
--	-------------------------------

11. List DBE's equipment used:

12. Does equipment have the DBE's markings / emblems?	12a. If no, please explain:	13. Does equipment used belong to DBE?
---	-----------------------------	--

14. Has any other contractor performed, on behalf of the DBE, work subcontracted to the DBE?

14a. If yes, please explain:

15. Has the DBE owner been present on the job site?

Note: Attach any documents pertinent to the review (i.e., invoices, photographs, daily reports, correspondence, etc.)

Review Conducted By: Mohammed Kabir, PHR. Sr. EO Compliance Officer **Date of Review:** _____

PRINT NAME

Signature: _____

SIGN NAME



District Department of Transportation

Office of Civil Rights

Disadvantaged Business Enterprise Program
Commercially Useful Function (CUF) On-Site Review

NARRATIVE:

DETERMINATION:

REVIEW POSTURE: _____ In Compliance _____ Non-Compliance

This report is the result of CUF On-Site Review activities conducted in accordance with the requirements of 49 CFR, Part 26 and the District Department of Transportation (DDOT).

I, the undersigned, am the primary reviewer and writer of the above CUF On-Site Review Report. All data collected and evaluated resulted in the stated findings and support the determinations in accordance with the Federal and State guidelines which govern the DBE Program.

NAME: _____ SIGNATURE: _____ DATE: _____
REVIEWER

OFFICE OF CIVIL RIGHTS or PROGRAM MANAGER REVIEW AND SIGNATURE:

CREDIT DETERMINATION: \$ _____ Credit Allowed
\$ _____ Credit Disallowed

This report appears to be conclusive and the findings as stated support the determination in accordance with the Federal and State guidelines, which govern the DBE Program.

NAME: _____ SIGNATURE: _____ DATE: _____
OCR/PROGRAM MANAGER

COMMERCIALLY USEFUL FUNCTION

A Disadvantaged Business Enterprise (DBE) is responsible for executing a distinct element of work and carrying out its

ATTACHMENT 6

**JOINT CHECK ARRANGEMENT
MONITORING FORM**



Joint Check DETERMINANTS

If any Red Flag Conditions are identified, contact the Chief of the Office of Civil Rights.

GENERAL CONDITIONS FOR ALLOWANCE:

- DBE submits request to DDOT for action.
- Subject of formalized agreement between all parties that specify the conditions under which the arrangement will be permitted.
- Full and prompt disclosure of the expected use of joint checks.
- Require prior approval.
- DBE remains responsible for all elements of 49 CFR Part 26.55(c)(1).
- The DDOT Office of Civil Rights clearly determines that independence is not threatened because the DBE retains final decision making responsibility.
- The DDOT Office of Civil Rights determines that request is not an attempt to artificially inflate DBE participation.
- Standard industry practice is only one factor.
- The DDOT Office of Civil Rights is to have a well-established monitoring process that has oversight mechanisms in place.
- No requirement by prime contractor that DBE is to use a specific supplier nor the prime "contractors" negotiated unit price.

GENERAL CIRCUMSTANCES:

- Standard Industry practice applies to all contractors.
- Use of joint checks must be available to all subcontractors.
- Material industry sets the standard industry practice, not prime contractors.
- Short term not to exceed reasonable time to establish/increase a credit line with the material supplier.
- No exclusive arrangement between one prime and one DBE in the use of joint checks that might bring independence into question.
- Non-proportionate ratio of DBE's normal capacity to size of contract and quantity of material to be provided under the contract.
- DBE is normally responsible for both to install and furnish the work item.
- DBE must be more than an extra participant in releasing the check to the material supplier.

RECORDS/DOCUMENTS

- Subcontract Agreement, Joint Check Agreement or Purchase Order must be executed by all parties.

RED FLAGS

- The DBE must provide the check to the vendor?
- The Prime Contractor negotiates the price and quantity.
- Invoices do not indicate that DBE is the customer.
- Prime's employee is listed as the contact person on invoices.
- Materials come from Prime's stockpiles.
- Materials are delivered by the Prime Contractor.
- Materials are ordered, and invoiced to the Prime Contractor.

RECORDS/DOCUMENTS

- Invoices
- Haul tickets or Bills of Lading
- Material on-hand documentation
- Joint check agreement
- Cancelled checks



DDOT DBE PROGRAM JOINT CHECK ARRANGEMENT MONITORING FORM

This form is for the purpose of approving, managing and monitoring a "Joint Check Agreement". A primary concern with allowing joint checks is that such a practice may make it difficult to determine whether the DBE is performing a commercially useful function. Also, this practice makes it much difficult to determine whether a DBE is controlling its operations (independent of other parties involved in the joint check arrangement.)

Project Number		Project Name	
Prime Contractor		DBE Contractor	
VENDOR		VENDOR TYPE:	

REASON FOR JOINT CHECK ARRANGEMENT:

FOR DDOT STAFF ONLY: WHICH PARTY REQUESTED THE JOINT CHECK ARRANGEMENT?

DBE **PRIME** **VENDOR** **OTHER**

	YES	NO
Was the DBE responsible for negotiating price?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Did the DBE determine the quality and quantity when ordering the materials/supplies?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Will the DBE install the supplies/materials during the contracted Scope of Work?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Is the Prime acting solely as a "GUARANTOR"?	<input checked="" type="checkbox"/>	<input type="checkbox"/>
Does the DBE release the check to the supplier?	<input checked="" type="checkbox"/>	<input type="checkbox"/>

SIGNATURE
VERIFIED BY: _____
PRINT NAME

SIGNATURE
APPROVED BY: _____
PRINT NAME

ATTACHMENT 7

DBE CONTRACT PAYMENT FORM & INSTRUCTION

DBE Contractor Payment Form Instructions

For more information, please contact the District Department of Transportation's Office of Civil Rights.

Contractor: Name of Contractor

Contract Value: Contract Award Amount

Project Name: Enter the Project Name as it appears on the Contract/Solicitation documents

Contract No: Enter the Project/Contract Number

DBE Goal: Enter the DBE Goal Percentage **DBE Contract Value:** Enter the Contract Value Amount multiplied by DBE Goal Percentage

DBE Payments to Date: Enter the total amount of payments made to ALL DBE Firms to date.

For Month of (Mo./Yr.): Enter the Month and Year reporting

% Project Complete: Enter the Project % Complete at the time of the reporting

PAYMENT LOG

Name of DBE: Enter the DBE Name

DBE Subcontract Amount: Enter the Contract Value awarded to the DBE for the scope of work to be performed as indicated in the Description of Work

Work/Services Performed: Enter a brief description of the work performed by the DBE for the payment listed.

Amount Paid this Period: Enter the Total Amount Paid to the DBE (**Attach copies of the Cancelled Checks**)

Total Paid to Date: Enter the total paid to the DBE to date (cumulative).

Totals: Enter the totals for this period of the columns, "AMOUNT PAID THIS PERIOD" AND "TOTAL PAID TO DATE"

REPORT PREPARED BY: Print the Authorized Representative Name, Signature of the Authorized Representative, Date form was signed

Forward the completed DBE Contractor Payment Form and copies of Cancelled Checks: via E-Mail: Mohammed.Kabir@dc.gov- Scanned copies of the completed original DBE Contractor Payment Forms and copies of Cancelled Checks are acceptable to fulfill this requirement.

Appendix B: DBE Contractor Payment Form

DDOT DBE Contractor Payment Form

OFFICE OF CIVIL RIGHTS

DBE Contractor Payment Form

CONTRACTOR:	CONTRACT VALUE:		
PROJECT NAME:	CONTRACT NO:		
DBE GOAL:	TOTAL DBE CONTRACT AMOUNT:	TOTAL DBE PAYMENTS TO DATE:	
FOR MONTH OF (MO./YR.)	% PROJECT COMPLETE		

In order to receive credit toward the DBE Goal, the Prime Contractor must complete the DBE Contractor Payment Form and submit MONTHLY to the District Department of Transportation's (DDOT) Office of Civil Rights. Failure to submit this form will result in no credit toward the contract DBE requirements and a delay in payment.

NAME OF DBE SUBCONTRACTOR	SUBCONTRACT AMOUNT	WORK/SERVICE PERFORMED	\$ AMOUNT PAID THIS PERIOD	TOTAL \$ PAID TO DATE
TOTALS			\$	\$

Credits towards the DBE goal can only be claimed after the amount being claimed toward the goal has been paid to the DBE. Prime Contractor shall submit documentation regarding all payments made from the Prime to all DBE Subcontractors on Federally Aided projects which validates said payments made. Attach a copy of the cancelled checks. This form must be completed and submitted monthly by the 15th of the next month for the period indicated above. This report must be submitted even if NO Activity took place during the period being reported

REPORT PREPARED BY: _____

DATE: _____

Print Name of Authorized Representative

Signature of Authorized Representative

OFFICE OF CIVIL RIGHTS

ATTACHMENT 8

DBE GOAL METHODOLOGY

THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

Department of Transportation



GOAL SETTING METHODOLOGY

GOAL SETTING METHODS

In accordance to February 2010 US Department of Transportation rule amendments to 49 CFR Section 25.45, the **District Department of Transportation (DDOT)** has established its FY 2012-2014 DBE goal of 11.5% (Race Conscious = 10%, Race-Gender Neutral = 1.5%) on Federal Transit Authority (FTA) funded projects effective for a period of three (3) years: FY 2012-2014.

The following describes the goal methodology used to determine this three-year goal:

Step 1 - Determination of Relative Availability of DBEs Contractors

As specified in Section 26.45(c) of the DBE Regulations, the method used to calculate the relative availability of DBEs (“base figure”) for Step 1 of the goal setting process is a percentage figure calculated by dividing a number representing available DBEs by a number representing all available firms.

In order to determine this number, DDOT utilized several sources of available data for calculating a base figure:

- DDOT’s and the Washington Metropolitan Transit Authority’s DBE electronic Directories. These directories comprise of all local area engineering and highway related construction firms, suppliers, consultants, etc. certified by the US Department of Transportation approved **Unified Certification Program (UCP)** between the **DDOT** and the **Washington Metropolitan Area Transit Authority (WMATA)**.
- The Census Bureau 2010 Country Business Pattern for the geographical area of Washington-Arlington, Alexandria, DC-MD-VA-WV Metropolitan Statistical Area. (<http://censtats.census.gov/cgi-bin/msanaic/msadetl.pl>)

To ensure a true and accurate goal is selected based on the amount and scope, calculations used will be based on the percentage of work anticipated by each of the major business groups listed. The anticipated work and percentage distribution best reflects the type of work by North American Industry Classification System (NAICS) codes that would typically be performed DDOT’s federal aid contracts. The lists were sorted using NAICS codes and compared in order to avoid double counting.

According to the U.S. Census Bureau, NAICS Codes is the standard used Federal statistical agencies for the purpose of collecting, analyzing and publishing statistical data related to the U.S. business economy. As such, businesses are classified according to the primary line of business

activity. Therefore, DDOT has determined the overall number of active contractors available for projects planned in FY 2012-2014 from the following NAICS Codes:

Design and Engineering (Consultants) NAICS

NAICS CODE	NAIC DESCRIPTION
541330	Engineering Services
541618	Other Management Consulting Services
541620	Environmental Consulting Services

Highway Construction (Contractors) NAICS

NAICS CODE	NAICS DESCRIPTION
237310	Heavy Highway, Bridge & Civil Engineering

2. Calculation of Base Number and Actual Anticipated Work

A comparison of all the lists, eliminating all duplicates, yielded a total of approximately 2,383 firms “ready, willing, and able” to perform on DDOT contracts. The base numbers are then calculated to reflect the percentage of estimated project cost to be completed by the DBE firms. Of the 2,393 available firms, 258 (11%) are DBE certified, ready, willing and able.

$$\text{Calculation: } \frac{\text{Total number of DBE Firms}}{\text{Total number of Firms}} = \frac{258}{2383} = 0.1082 \times 100 = 10.82 \quad \text{or } 11\%$$

In order to determine the specific contracting opportunities for FY 2012-2014, the DDOT reviewed the Transportation Improvement Program (TIP) for FY 2013-2013 Transit-related projects and the FTA Planned Funding from the DDOT Progressive Transportation Services Administration (PTSA) Mass Transit Division. The report is as follows:

Type of Project	Description	Amount
Construction	East-West Transitway	\$10,000,000.00
EA & Sec 106	DC Streetcar M Street Ext NEPA	\$1,500,000.00
EA & Sec 106	Union Station to Gtown Waterfront NEPA	\$1,397,900.00
EA & Sec 106	DC Streetcar Benning RD Ext NEPA	\$1,200,000.00
EA & Sec 106	Historic Anacostia Streetcar NEPA	\$577,000.00
Planning	DCAlt Anlys-Union Stn-GrgetwnWaterfrnt	\$1,000,000.00
Planning	Metropolitan & Statewide Planning	\$3,626,448.00
	Total FTA Assisted Projects	\$19,301,348.00

These dollars are to be utilized for highway, bridge, street planning and construction.

A further analysis revealed that out of a three (3) year total federal aid spending of \$19,301,348.00, it is anticipated that during FY 2012-14, DDOT will spend \$9,301,348.00 or approximately 48% of its FTA federal-assisted funds on NEPA Studies and planning related contracts and \$10,000,000 or approximately 52% of its FTA assisted funds for highway and construction-related activities.

HIGHWAY AND STREET CONSTRUCTION

NAICS CODE	DDOT DBE FIRMS	METRO AREA TOTAL FIRMS
237310	20	157

DESIGN AND PROFESSIONAL SERVICES

NAICS CODE	DDOT DBE FIRMS	METRO AREA TOTAL FIRMS
541330	122	1,785
541618	72	184
541620	34	267
Totals	228	2236

In calculating the base figure, DDOT used the methodology as prescribed in the U.S. Transportation Office of Small and Disadvantaged Utilization (OSDBU) website, *Tips for Goal Setting in the Disadvantaged Enterprise (DBE) Program* (<http://osdbu.dot.gov/DBEProgram/tips.cfm>):

$$.9[\text{Number of DBE Highway \& Street Construction}] + .1[\text{Number of DBE Design \& Professional Svcs.}]$$

$$[\text{Number all Highway \& Street Construction Firms}] \quad [\text{Number of All Design \& Professional Svcs.}]$$

$$.5\left[\frac{20}{157}\right] + .5\left[\frac{228}{2236}\right] = .5[.127] + .5[.10]$$

$$= .063 + .05 = .113 \times 100 = 11.3$$

Thus, the base figure is 11.3%.

This calculation allots funds according to the percentage of work each type of business would perform in the execution of upcoming projects involving, design, consulting and construction.

Weighted Calculation of the Step 1 Base Figure:

To ensure the accuracy of the Step 1 Base Figure, the base figure was weighted and calculated using the percent of the total contract dollars for each anticipated contract as demonstrated in Table 2:

Table 2.

NAICS Code	Project	Amount of DOT funds on project:	% of total DOT funds (weight)
237310	East-West Transitway	5,000,000.00	0.6835
541620	DC Streetcar M Street Ext NEPA	500,000.00	0.0683
541330	Union Station to Gtown Waterfront NEPA	300,000.00	0.0410
541330	DC Streetcar Benning RD Ext NEPA	200,000.00	0.0273
541330	DCAlt Anlys-Union Stn-GrgetwnWaterfrnt	108,000.00	0.0148
541620	Historic Anacostia Streetcar NEPA	577,000.00	0.0789
541618	Metropolitan & Statewide Planning	630,289.00	0.0862
Total FTA-Assisted Contract Funds		\$7,315,289.00	1

The next step in calculating the weighted base figure is to determine the relative availability of DBEs for each contract as detailed in Table 3 below:

NAICS Code	Project	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability
237310	East-West Transitway	20	157	0.1274
541620	DC Streetcar M Street Ext NEPA	34	267	0.1273
541330	Union Station to Gtown Waterfront NEPA	122	1785	0.0683
541330	DC Streetcar Benning RD Ext NEPA	122	1785	0.0683
541330	DCAlt Anlys-Union Stn-GrgetwnWaterfrnt	122	1785	0.0683
541620	Historic Anacostia Streetcar NEPA	122	1785	0.0683
541618	Metropolitan & Statewide Planning	17	184	0.0924

Combined Totals	559	7748	0.0721	Overall availability of DBEs
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Utilizing the re Using the results from the tables 2 and 3 above, the results are calculated to determine the weighted based figure as shown in Table 4 below:

Table 4.

NAICS Code	Project	Weight	x	Availability	Weighted Base Figure
237310	East-West Transitway	0.68350	x	0.12739	0.0871
541620	DC Streetcar M Street Ext NEPA	0.06835	x	0.12734	0.0087
541330	Union Station to Gtown Waterfront NEPA	0.04101	x	0.06835	0.0028
541330	DC Streetcar Benning RD Ext NEPA	0.02734	x	0.06835	0.0019
541330	DCAIt Anlys-Union Stn-Grgetwn Waterfrnt	0.01476	x	0.06835	0.0010
541620	Historic Anacostia Streetcar NEPA	0.07888	x	0.06835	0.0054
541618	Metropolitan & Statewide Planning	0.08616	x	0.09239	0.0080
Total					0.1148
Expressed as a % (*100)					11.48%
Rounded, Weighted Base Figure:					11.5%

Therefore, the rounded weighted based figure is 11.5%

Step 2 -- Adjustment to Base Figure

Step 2 of the goal setting calculations process involves consideration of adjustments to the percentage of availability (base figure) obtained in Step I in comparison with the value of Average Past Performance. The idea is to determine a reasonable level of DBE participation that can be achieved absent discriminatory practices.

1. Consideration of Previous Years' Performance

2. Adjusting the Step 1 Base Figure with the Median Past Performance

Due to the lack of DBE Goals assigned to the past four years of history therefore, DDOT cannot calculate a median percentage. 49 CFR Section 26.45(d) and the goal setting and methodology guidelines set forth on the Office of Small and Disadvantaged Business Utilization's (OSDBU) website states:

- Adjustment for past participation is not required if you are developing a DBE program for the first time and do not have any statistics on past DBE participation.

While we may consider making adjustments to the base figure, we are not required to make such an adjustment, as we are developing a DBE Program for FTA0-assisted projects for the first time. Therefore, DDOT DBE Goal for FY 2012 - 2014 is **11.5%**.

3. Adjusting the Goal in Consideration of Current Market Dynamics

DISPARITY STUDY

The OSDBU's *Tips for Goal Setting in the Disadvantaged Business Enterprise Program's* website, suggest that data should be collected and analyzed to consider the current market dynamics as a means to determine whether or not an adjustment to the goal is necessary. One suggested method is to analyze the results of a disparity study. The DDOT has not conducted a disparity study. Therefore, we do not have sufficient quantitative data to support an adjustment.

PUBLIC PARTICIPATION

Consistent with the requirements of 49 CFR Part 26, DDOT will aggressively seek input of the business community in the design and implementation of its DBE Program, including receiving comments regarding the effectiveness of its established annual goals and the appropriate methodology for setting its annual overall goal.

RACE/GENDER-NEUTRAL AND RACE/GENDER-CONSCIOUS MEASURES

The DDOT will meet the maximum feasible portion of its overall goal using Race/Gender-Neutral (R/G-N) means. The OSDBU website provides guidance as to how DOT recipients capture data and calculate the race/gender-neutral portion of the overall DBE goal. It states, "If you have instituted new and comprehensive mechanisms aimed at obtaining additional DBE participation through race/gender-neutral means, these efforts might provide the basis for estimating a greater level of race/gender-neutral participation for the upcoming year." Since this is a new DBE program for FTA-assisted programs, the following considerations were explored and analyzed:

- A. Consideration of the Amount by Which DDOT Exceeded Past Years Goals.
RESPONSE: Since the agency has only one (1) FTA-funded project with a DBE goal in accordance with 49 CFR Part 26, there is not sufficient history to consider this option.
- B. Consider Past Participation by DBE Prime Contractors.
RESPONSE: Since this is a new FTA DBE program, there is no sufficient data to consider this option.
- C. Consider Past Participation by DBE Subcontractors on Contracts Without Goals.
RESPONSE: Since this is a new FTA DBE program, there is no sufficient data to support this option.
- D. Consider MBE/WBE/DBE Participation Pursuant to Race/Gender-Neutral State or Local Programs.
RESPONSE: DDOT does not have sufficient data for consideration.
- E. Consider Concrete Plans to Implement New Race-Neutral Methods.

RESPONSE: DDOT has a newly-approved small business program, in accordance with 49 CFR Part 26. This program, along with our existing DBE Supportive Services Program, these efforts might provide the basis for an estimated 1.5% race/gender-neutral participation for FY 2012-2014. DDOT through its DBE Supportive Services Program will employ the following race/neutral strategies:

1. Distribution of bi-weekly procurement and small business development training opportunities;
2. Networking Events for small businesses to meet prime contractors;
3. Bi-monthly DDOT 101 For small businesses who are interested in doing business with the agency;
4. Small business development workshops such as marketing, bond financing, estimating and other business opportunity workshops.
5. Implementation of a Mentor-protégé program.

DDOT recommends that the Race/Gender-Neutral measures shall be maintained and monitored in accordance to the DDOT Small Business Program.

DDOT believes that the use of both Race/Gender-Neutral and Race/Gender-Conscious measures are necessary in order to achieve fair/equitable contracting and recommends a three year (2012-2014) DBE Goal to be adjusted to **10%** using Race/Gender-Conscious and **1.5%** using Race/Gender-Neutral measures.

As a result, DDOT anticipates meeting the FY 2012-2014 Overall Annual DBE Goal of **11.5%: 10%** Race-Conscious participation and **1.5%** Race-Neutral participation.

SMALL BUSINESS CAPACITY BUILDING ACTIVITIES

The DDOT will continue its efforts to assess its business capacities through on-going outreach and small business development.

SURVEYS FOR DBE FIRMS AND PRIME CONTRACTORS

In FY 2010, The DBE Supportive Services Program developed two surveys: One each for DBE firms and prime contractors. This much-anticipated project was necessary in order for the DDOT to ascertain the needs of the DBE community and to evaluate the persistent barriers to participate in DDOT's highway and road construction projects.

DBE SUMMIT

During FY 2011 and FY 2012, DDOT hosted an annual networking event (DBE Summit) to discuss procurement opportunities and provide networking opportunities with the Agency's prime construction contractors and A/E project managers. Both events attracted over 200 participants from across the Washington Metropolitan region. DDOT has decided to continue to host this event annually. We have listened to the small business community, and they expect to build more partnerships with prime contractors.

2012-2014 DBE GOAL COMMUNITY COMMENTS

DDOT held a public meeting on July 2, 2013 to receive comments specifically about the establishment of its FY 2012-2014 DBE Goal. In accordance with 49 CFR Part 26.45(g)(1) and (2), the meeting notice was published on DDOT's website and in the following publications:

- Afro-American Newspaper
- Kaggwa Communications/The District Chronicle
- The Washington Hispanic
- The Washington Informer
- The Washington Times

The document will be available for public review and comments during our normal business hours. DDOT will also accept comments on the goals for 45 days from the date of the notice.

OUTREACH

DDOT will continue its efforts throughout the Washington Metropolitan Area to recruit DBEs and other small business concerns, focusing on agencies performing similar transportation-related contracting, i.e., the Departments of Transportation for Maryland and Virginia, Washington Airports Authority, and WMATA.

NETWORKING

DDOT will continue to host networking sessions linking prime contractors with subcontractors in an effort to facilitate communications and awareness regarding the capabilities of DBE certified firms and other small business concerns to enhance joint partnership opportunities.

SUPPORTIVE SERVICES

DDOT will continue its initiatives to provide support services to its certified DBEs. DDOT will continue conducting targeted assessments of the capabilities of its certified DBEs, and other small business concerns by identifying and providing technical assistance and training necessary to assist with their growth and development objective. DDOT established a centralized Business Opportunities and Workforce Development Center (BOWDC) where the small business community receives assistance in the area of bond readiness, financial planning, bidding and estimating, etc. Eligible construction-related small businesses will also be able to access the BOWDC during regular business hours to obtain information on bid/subcontracting opportunities, utilize computer terminals to access information regarding procurement opportunities, developing business plans, and accounting and bidding software.

DBE NEWSLETTER AND OTHER ON-LINE PUBLICATIONS

The DBE Supportive Services Program through the BOWDC publishes a quarterly newsletter, The DBE Insider. Although the target audience is the DBE community, the information is applicable to all small businesses regarding information on current DDOT projects, both locally and federally funded procurement opportunities.

EXPANSION OF SMALL BUSINESS DEVELOPMENT TECHNICAL ASSISTANCE AND RESOURCES

Partnership with DBE Financial Institutions

In accordance with 49 CFR Part 26.27, DDOT welcomed the Industrial Bank of Washington (IBW) to the Short Term Lending Program team. IBW is the oldest and largest African American commercial bank in the metropolitan Washington region. IBW has several branches in the District of Columbia and in Prince George's County, Maryland. The DBE/SS Program through its BOWDC will partner with IBW in the new fiscal year on several small business financial education workshops.

Webinar: Doing Business with DDOT

During FY 2012, the Agency embarked on a series of webinars entitled, "Doing Business with DDOT." This webinar series includes: DDOT 101 How to Do Business with DDOT, Contract Basics, How to Write a Winning Proposal and other offerings that will be provided during the remained of FY 2012. It is the Agency's goal to provide recurring webinars that will take into consideration new firms that enter into the Agency's market and also require the course for new and re-evaluated DBE firms. During the outset of the training season, these webinars were targeted towards DBE firms participating in the Business Assistance Program. However, the Office of Civil Rights (OCR) received positive feedback, and therefore, made the courses available to the general small business community.

Doing Business with DDOT Annual Business Forum

In September, 2010, DDOT convened its first "Doing Business with DDOT Annual Business Forum". The BOWDC Coordinator supported the efforts of DDOT's Infrastructure Project Management Administration in providing outreach and recruitment efforts to the general business community. This was DDOT's first official forecasting event that informed the DBE and prime contracting community about future federal-aid contracts for FY 2011. Over 100 firms attended the successful event.

Other Supportive Services

The BOWDC Team continues to support our DBE firms who are currently engaged on DDOT's federal-aid highway construction projects. Throughout the quarter, the team has conducted the following activities:

- Assisted prime contractors' good faith efforts for partnering with DBE firms on federal-aid projects;
- Fielded DBE concerns regarding non-payment and work scheduling matters;
- Supported new DBE firms entering our program and providing information on upcoming business opportunities with DDOT and our partner agencies in the Metropolitan Washington area;
- Assisted over 200 DBE firms with procurement information, capability statement advisement and general information about the DBE program;

- Publishing and Distribution of bi-weekly procurement announcements; and
- Attending outreach events sponsored by our partnering agencies.

ON-GOING COMMUNICATION WITH PRIME CONTRACTOR COMMUNITY

The BOWDC Coordinator published a quarterly electronic newsletter to inform the prime contracting community of the various resources available to increase their DBE subcontractors' financial capacity. The newsletter also informed the prime contractor community of the availability of the BOWDC coordinator and other OCR staff members for consultation prior to the need to substitute a DBE firm on a federal-aid project.

Prime Contractor Survey

To better determine the needs of the prime contractor community, the DBE/SS team collaborated to develop and distribute the prime contractor survey. Using Survey Monkey, an online survey instrument, the survey period ran for approximately one from March 18, 2011 and April 15, 2011. The goal was to get a snapshot of responses prior to the DBE Summit and Networking Event. Below is an excerpt from the survey.

- The DBE/SS Business Development Consultant advertised the prime contractor survey to a total of 100 prime contractors.
- Twenty-seven (27) responded to the online survey, (a response rate of approximately 30%)
- Approximately **80% of the** respondents indicated that DC **was** their primary place of business. **100%** of the out-of-state respondents indicated primary business operations in **Virginia, Maryland, and/or Pennsylvania.**
- The majority of respondents are **A/E firms:**
- Nearly **56%** of Prime Contractors who responded have received **1-5** DDOT federal-aid contracts. Almost **30%** of the respondents have not received any (**zero**).

Networking Opportunities with the Prime Contractor Community

During FY 2011-12 the DBE SS team in collaboration with the District Department of Small and Local Business Development (DSLBD), the BOWDC team supported the good faith efforts of our prime construction and engineering community. Notably, individual networking sessions were held for Fort Myer Construction Company and Parsons Brinckerhoff (PB) for DBE firms and other small businesses that were interested in pursuing subcontracting opportunities. FMCC is DDOT's most active federal-aid contractor that has experienced challenges with identifying locating DDOT-certified firms who have the business capacity to perform on the Agency's federal-aid construction projects. PB is also a well-respected engineering firm that conducts business with DDOT on a number of federal aid projects. Both events attracted over 40 firms who were eager to market their services to these respected firms in our community. Additional firms are scheduled for FY 2013.

TECHNICAL TRAINING

Road and Highway Construction Safety Certification and Compliance

Throughout FY 2010-12, the BOWDC sponsored several safety certification courses in collaboration with our trainer/partner The American Road and Transportation Association (ARTBA) the following courses were offered:

- 1) 30-Hour OSHA courses
- 2) 10-Hour OSHA Courses (including rollover/rollback safety)
- 3) Construction Math, Blue Print Reading and Estimating
- 4) Flagger Courses
- 5) First Aid/CPR

The American Road and Transportation Builders Association (ARTBA) conducted a Flagger Training course. In FY 2012 in partnership with ARTBA and the University of the District of Columbia Community College Workforce Development and Lifelong Learning Division (UDC-CC), a 10-hour OSHA training with rollback/rollover safety was offered to all construction-related small businesses in both English and Spanish languages. As of this date, 49 participants attended the courses or received the courses on site at their offices.

During FY 2010-12, the BOWDC in partnership with the District Department of Housing and Community Development and the U.S. Department of Labor Wage & Hour Compliance Division, sponsored annual Davis Bacon Act workshops. This workshop is opened to both primes and subcontractors who are required to submit weekly certified payroll records.

Small Business Development Activities

Low Impact Development (LID) Training for Small Business Firms

DDOT and the Community College the University of the District of Columbia (CCDC) Workforce Development Center for Lifelong Learning executed a Memorandum of Understanding (MOU) to implement the Low Impact Development (LID) Training for Small Business firms. This is another much need program that will increase opportunities for small landscaping firms.

Financial Capacity Building

During FY 2010-12 DDOT's DBE Consultants and the 11th Street Bridge DBE Project Management Team and the Mid-Atlantic Region Small Business Transportation Resource Center facilitated several Financial Capacity workshops that included construction financing options. The DBE/SS Marketing /Business Development Consultant convened a meeting with the Mid-Atlantic Region Small Business Transportation Resource Center (SBRTC) Program staff and the Short Term Lending Program (STLP) lenders to strategize how to best serve the small business community and build their financial capacity. Following that, we developed plans to team with SBRTC and regional STLP lenders to offer financial information and technical assistance sessions for DBE and other small business firms at the BOWDC.

Outreach Activities

During FY 2010-12, the DBE Supportive Services Team under the auspices of the BOWDC participated in the following procurement outreach events:

1. Exhibitor at the Annual OSDBU Procurement Fair
2. Participated as a panelist during the Congress Heights Community Leadership Development Council with the Office of Contracts and Procurement
3. Exhibitor at the Metropolitan Washington Airports Authority Annual Business Opportunity Day
4. Exhibitor at the U.S. Department of Transportation OSDBU Veterans Event
5. Exhibitor at the U.S. Department of Transportation OSDBU Networking Event

University of Maryland Transportation Technology Transfer Center

The DBE/SS Program partners with the University of Maryland Transportation Technology Transfer Center to offer advanced transportation-related training to DDOT-certified DBE firms. The DBE/SS subsidizes the cost of the training for qualified DBE firms.

Partnerships

The Agency believes the success of the DBE/ SS Program is due to the work and relationship building of the BOWDC staff and the strategic partnerships that it recruits to carry out the mission of this program. Each partner is committed to the development of the small business entrepreneur and to assisting individuals to obtain sustainable employment through the

highway construction trade industry. Each partner has offered their organizational resources in-kind or at reduced costs as their commitment to the Agency and to the program.

District Department of Transportation Infrastructure Project Management Administration

Serve as the BOWDC's fiscal partner as an integral outreach component of the Anacostia Waterfront Initiative.

District Department of Employment Services (DOES)

DOES has agreed to support this effort on a variety of programmatic levels due to its mission to assist businesses in increasing and developing their workforce capacity, encouraging entrepreneurship as an alternative employment strategy and assisting unemployed individuals to gain sustainable employment.

- Project Empowerment and the Senior Empowerment Program provide in-kind services through the recruitment and placement of individuals in the areas of administrative support.

Department of Local, Small and Disadvantaged Business Development (DSLBD)

As a founding partner, the DLSBD Office partners with the BOWDC to offer free or low cost business development courses designed for small businesses. The office has also offered their training space to host seminars as it is conveniently located in central downtown Washington, D.C.

The Office of Contracting and Procurement

Provide roundtable discussions on DDOT's procurement forecasting and other vital workshops targeted toward small business development.

Washington Metropolitan Transit Authority (WMATA)

As a partner in the Unified Certification Program, WMATA provides the DBEs with additional procurement opportunities. WMATA also is a strategic partner on various networking events and procurement conferences.

DC Chapter, National Association of Minority Contractors (NAMC)

Offers access to members who are DDOT DBE certified and also pledges to co-sponsor events targeted to the organization's membership.

The American Road and Transportation Builders Association (ARTBA)

Current contractor - provide the advanced safety certifications for our DBE firms.

University of Maryland Transportation Technology Center

Strategic Partner that provides advanced technical training courses to certified DBE firms.

Ward 8 Business Council

The Ward 8 Business Council is a strategic community partner with a strong reputation for advocating for and developing small businesses in Ward 8, within the Anacostia Waterfront Development Zone. Partnership provides information for small businesses interested in highway and road construction opportunities. They partner with the DBE/SS to coordinate outreach to increase the number of certified DBEs. Share information on training and networking opportunities.

Washington Area Community Investment Fund

The Washington Area Community Investment Fund (WACIF) serves the small business community in the District of Columbia. WACIF provides technical assistance as well as micro-loans to the small business community.

The Washington Network of Small Business Development Centers

Under the auspices of the Howard University School of Business, this strategic partnership will provide DBEs with SBA-sponsored resources.

SCORE Business Counselors for Small Businesses

A resource partner of the SBA, SCORE utilizes a cadre of volunteers of retired business executives who offer free business counseling and access to free or low cost entrepreneurial workshops designed to assist the growth of small businesses.

ATTACHMENT 9

Section 26.51: Breakout of Estimated Race-Neutral & Race Conscious Participation

**Section 26.51: Breakout of Estimated
Race-Neutral & Race Conscious Participation**

DDOT will meet the maximum feasible portion of its overall goal by using race-neutral means of facilitating DBE participation.

We estimate that, in meeting our overall goal of **18%**, we will obtain **1.5%** from race-neutral participation and **10%** through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation. The estimate was arrived in accordance with 49 CFR Part 26.45, in determining the relative availability of DBE firms within the Washington Metropolitan area, based applicable NAICS Codes. The relative availability was weighted against the percentage of the anticipated dollar amount for the anticipated scope of work. The calculations derived from these two factors resulted in the weighted base figure of 11.5% for the agency's overall triennial goal.

In order to ensure that our DBE program will be narrowly tailored to overcome the effects of discrimination, if we use contract goals we will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see 26.51(f)) and we will track and report race-neutral and race conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following: DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry DBE goal; DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

DDOT uses the following race-neutral means to increase DBE participation:

1. Bi-monthly DDOT 101 For small businesses who are interested in doing business with the agency;
2. Small business development workshops such as marketing, bond financing, estimating and other business opportunity workshops.
3. Other activities included:

Procurement Opportunities

Throughout FY 2010-12, the BOWDC distributed regular bi-weekly procurement workshops and training updates to DBE firms listed in DDOT's and WMATA's directory. Additionally, the DBE Supportive Services Coordinator shared the announcements with DDOT's regional partners in Maryland and Virginia and with other partners that serve the small business community throughout the Metropolitan Washington Region.

DBE Summit and Networking Event

The DDOT OCR, led by the DBE Supportive Services Team, in collaboration with the District Division of the Federal Highway Administration (FHWA), will facilitate and host an annual DBE Summit. Each year, over 200 participants attend the event that features industry-related workshops and networking. Beginning in FY 2013, as a component of the Agency's Race/G-N, small business program, the program will be expanded to include a greater number of construction-related small business firms.

Collaboration with the District Department of Small and Local Business Development

In an effort to expand our DBE directory with certified DBE firms who are ready, willing and able to perform on DDOT's federal-aid highway construction projects, the DDOT OCR elevated its partnership with the District Department of Small and Local Business Development's by participating in its pre-certification information sessions. The DBE Marketing/Business Development Consultant conducts quarterly "DBE for CBEs" information sessions. These sessions provide our local certified businesses information about our DBE program and potential business opportunities. Further, as the agency develops its small business enterprise program, this partnership in addition to our other sister transportation agencies, will be a valuable resource for competitive federal-assisted transportation projects.

Partnerships with other Small Business Development Entities

During FY 2013, the BOWDC staff will engage the Washington, DC Small Business Development (SBDC) Network, Darrell Brown and staff to solidify a partnership to provide support and technical assistance to small business firms. This is not the first time that DDOT and SBDC partnered on business development-related projects. In 2008, the SBDC, along with WMATA, partnered with DDOT to host several procurement workshops, including one that focused on women-owned businesses. Therefore, the BOWDC team looks forward to continuing to work with the SBDC under their new leadership.

ATTACHMENT 10
GOOD FAITH EFFORTS

GOOD FAITH EFFORTS

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found in Appendix A to Part 26 and are listed below.

In accordance with 49 CFR part 26.53, bidders who are unable to document that it has obtained enough DBE participation to meet the goal, must provide documentation showing that it made adequate good faith efforts to meet the goal, even though it did not succeed.

1. Demonstrating good faith efforts means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

The following is a list of types of actions which will be considered as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- 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 must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals 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 force.
- 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.
- (a) Negotiating in good faith with interested DBEs. It is the bidder'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.

(b) A bidder 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 failure to meet the contract DBE 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 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.

2. 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 vs. 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.
6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. 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.

ATTACHMENT 11

**OFFICE OF CIVIL RIGHTS
DBE UTILIZATION FORM**

OFFICE OF CIVIL RIGHTS

DBE Utilization Form Instructions

For more information, please contact the DDOT's Office of Civil Rights.

Contract/Bid No: Enter the Project Number or Solicitation Number

DBE Goal: Enter the DBE Goal noted in the Contract/Solicitation documents

Project Name: Enter the Project Name as it appears on the Contract/Solicitation documents

Contract Type: Enter the Contract Type, i.e., Construction, Design, Construction Management, etc.

Contract Value: Contract Award Amount

DBE Goal Value: Enter the value of the Contract Award Amount multiplied by DBE Goal Percentage

Original or Modified Plan: Indicate whether this is an original DBE Plan or a request for modification due to change in circumstances or as a result of denial of an original plan.

DBE PLAN

Name & Address of DBE: Enter the DBE Name and Address

Description of Work to be completed by DBE: Enter a condensed version of the scope of work to be performed by the DBE. Specify type of work and the percentage of the type of work to be performed by the DBE, i.e., Type: Trucking, Supplies, Material, Labor or a combination thereof. **Please be reminded that if DBE subcontractor's scope is to furnish Supplies/Material without installation cost must be calculated at 60% of the total contract value to be applied towards DBE Goal!**

Estimated Dollar Value of DBE Participation: Enter the Estimated Contract Value to be awarded to the DBE for the work to be performed. This Contract Value should appear on the Letter of Intent. If the DBE is a supplier, indicate the amount of expenditures allocated for services separate from supplies.

% of DBE Participation: Divide the Contract Value noted on the Letter of Intent by the Contract Value awarded by DDOT to determine the % of DBE participation for each DBE listed.

Totals: Enter the total of the "Estimated Dollar Value of DBE Participation" and "% of DBE Participation" columns.

Print the Contractor Name

Print the Authorized Representative Name

Signature of the Authorized Representative

Date form was signed

Attach a copy of the DBE Certification Letter, DBE Quote to the Contractor and the Letter of Intent for all DBE's listed on the DBE Plan.

For questions or to forward the completed DBE Utilization Form and all required documents for processing, please contact by e-mail: Mohammed.Kabir@dc.gov. **Mohammed Kabir, PHR/Sr. EO Compliance Officer**

DBE UTILIZATION FORM

OFFICE OF CIVIL RIGHTS

DBE UTILIZATION FORM

CONTRACT/BID NO: _____ DBE GOAL: _____
PROJECT NAME: _____ CONTRACT TYPE: _____
CONTRACT VALUE: _____ DBE GOAL VALUE: _____

Please check one: Original Plan Modified Plan

I/We, (THE CONTRACTOR) _____ hereby submit the following proposed plan for DBE participation, in keeping with requirements set forth in 49 CFR 26.53. I/We understand and agree that the District Department of Transportation's Office of Civil Rights will review the below information and issue a decision as to approval or denial. The Notice to Proceed (NTP) will not be issued until this document and all required attachments have been received and approved by the DDOT Office of Civil Rights!

DBE PLAN			
Name & Address of DBE	Description of Work to be completed by DBE	Estimated Dollar Value of DBE Participation	% of DBE Participation
TOTALS		\$	%

Failure to comply with these directives may prevent/delay the issuance of the NTP for this project.

The undersigned hereby further assures that the information included herein is true and correct, and that the DBE firm(s) listed herein have agreed to perform a commercially useful function stated in the work description noted for each firm. The undersigned further understands that no changes to the DBE Plan may be made without prior approval from the DDOT Office of Civil Rights.

Contractor

Print Name of Authorized Representative

Signature of Authorized Representative

DATE: _____

APPROVED: _____ DENIED: _____

Mohammed Kabir, PHR/-Sr. EO Compliance Officer

Attachment-12

**AGREEMENT FOR UNIFIED CERTIFICATION PROGRAM
BETWEEN
WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
AND
DISTRICT DEPARTMENT OF TRANSPORTATION
(Revised December 2011)**

**AGREEMENT FOR UNIFIED CERTIFICATION PROGRAM
BETWEEN
WASHINGTON METROPOLITAN AREA
TRANSIT AUTHORITY
AND
DISTRICT DEPARTMENT OF TRANSPORTATION**

(Revised March 2012)

PREAMBLE

THIS AGREEMENT is made and entered into by and between the Washington Metropolitan Area Transit Authority (WMATA), an interstate compact agency which includes the District of Columbia, State of Maryland and Commonwealth of Virginia, as well as, the District Department of Transportation (DDOT), a city agency of the District of Columbia.

WHEREAS, 49 CFR Part 26.81 requires recipients of federal transportation assistance to create a Unified Certification Program as part of its Disadvantaged Business Enterprise Program; and

WHEREAS, each party to this agreement certifies firms as disadvantaged business enterprises, and will continue to do so at their own expense, and are similarly situated as independent and overlapping jurisdictions, thus creating the likeness of a state with subdivisions, desire to combine their resources to perform certifications as a Unified Certification Program, as mandated under 49 CFR Part 26.81; and

NOW, THEREFORE, in consideration of the mutual promises and benefits that each party shall derive here from, the parties agree as set forth hereinafter.

POLICY

It will be the policy of the Metropolitan Washington Unified Certification Program (MWUCP) to ensure that only firms certified by the Metropolitan Washington Unified Certification Program, through its participating members (DDOT & WMATA), will be eligible to participate in the Disadvantaged Business Enterprise (DBE) programs operated by the participating members. Also, it will be the policy of the Metropolitan Washington Unified Certification Program to ensure that participating members shall continue to carry out Disadvantaged Business Enterprise programs until all federal funds from the U.S. Department of Transportation financial assistance have been expended. Updates will be provided to the U.S. Department of Transportation by the Metropolitan Washington Unified Certification Program representing significant changes in the unified certification program and the disadvantaged business enterprise programs of participating members, as required.

**DISADVANTAGED BUSINESS ENTERPRISE
METROPOLITAN WASHINGTON
UNIFIED CERTIFICATION PROGRAM**

SECTION 1.0 GENERAL PROVISIONS

Section 1.1 Objectives

The general objective of this Unified Certification Program is to:

- (a) Establish a Unified Certification Program (UCP) which meets the requirements of 49 CFR Part 26.81;
- (b) Establish the form, substance, parameters and purpose of the UCP;
- (c) Follow all DBE certification procedures and standards, as they apply under Part 26;
- (d) Fully cooperate with the oversight, review and monitoring activities of the U.S. Department of Transportation (DOT), the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA), respectively; and
- (e) Ensure that only firms that fully meet Metropolitan Washington Unified Certification Program (MWUCP) eligibility standards are permitted to participate as DBEs.

Section 1.2 Name

The name of the UCP shall be the Metropolitan Washington Unified Certification Program (MWUCP). It shall be comprised of the Washington Metropolitan Area Transit Authority (WMATA) and the District of Columbia Department of Transportation (DDOT).

Section 1.3 Definitions

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121.103

- (a) Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (1) One concern controls or has the power to control the other; or
 - (2) A third party or parties controls or has the power to control both; or
 - (3) An identity of interest between or among parties exists such that affiliation may be found.

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (b) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, previous relationships and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

ACDBE means a firm that has been certified as an Airport Concession Disadvantaged Business Enterprise or ACDBE pursuant to 49 C.F. FR. parts 23 and 26.

Bidder, Offeror and Proposer are synonymous and mean any person or entity which seeks to do business with WMATA or DDOT and has submitted or seeks to submit a bid, offer or proposal to secure same.

Bona Fide Business concern is a DBE firm providing a service, such as professional, technical, consultant, or managerial services.

Committee refers to the Metropolitan Washington Unified Certification Program Committee.

Confidential Business Information means financial information obtained from a person and privileged or confidential. This means if disclosure by the government would be likely to harm the competitive position of the person who submitted the information and or detailed information on a company's marketing plans, profits, or costs can qualify as confidential business information. Information may also be withheld if disclosure would be likely to impair the government's ability to obtain similar information in the future.

Compliance means that a recipient has correctly implemented the requirements of 49 CFR Part 26.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this program, contract refers only to federally-funded contracts.

Contractor means one who participates on or through a contract or subcontract, at any tier, in any program covered by 49 CFR Part 26.

DDOT means the District of Columbia Department of Transportation.

Department or DOT means the U.S. Department of Transportation including the Office of the Secretary and the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA).

Disadvantaged Business Enterprise or DBE means a for-profit small business concern (a) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or MOU, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

FTA means the Federal Transit Administration.

FHWA means the Federal Highway Administration.

Good Faith Efforts (GFE) means efforts to achieve a DBE goal or other requirement of 49 CFR Part 26 which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home State means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate Family Member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern".

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Disadvantaged Business Enterprise
Metropolitan Washington UCP

MCRP means Modified Certification Reciprocity Program, the program set forth herein for DBE/ACDBE firms that have Home State Certification. For purposes of this MOU, the UCP granting Home State Certification must be a Party to this MOU.

MWAA means Metropolitan Washington Airports Authority.

MWUCP means the Metropolitan Washington Unified Certification Program.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Participating Members collectively refers to the entities that make up the Metropolitan Washington Unified Certification Program.

Part 26 means 49 CFR Part 26.

Personal net worth (PNW) means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm or the individual's equity in his or her primary place of residence. An individual's personal net worth includes his or her own share of assets held jointly or as community property with the individual's spouse.

Primary Industry Classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual – United States, 1997 which is available from the Nations Technical Information Services, 5285 Port Royal Road, Springfield, VA 22161; by calling 1-800-553-6847; or via the Internet at:

(a) <http://www.ntis.gov/product/naics.htm>; (b) <http://www.naics.com>; or (c) <http://www.census.gov/naics>.

Primary Recipient means a recipient which receives U.S. DOT financial assistance and passes some or all of it on to another recipient.

Principal Place of Business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use U.S. DOT financial assistance, authorized by the laws to which 49 CFR Part 26 applies.

Race-conscious means a measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral means a measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FHWA, FTA, FRA or MWAA .

Reciprocity is the mutual exchange of privileges and the recognition by members of a Unified Certification Program of the validity of DBE certification privileges granted by the other participating members WMATA, DDOT, MDOT, MWAA, and VADMBE.

Secretary means the Secretary of Transportation or his/her designee.

Small Business Administration or SBA means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SBD programs.

Small Business Concern means, with respect to firms seeking to participate as DBEs in U.S. DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

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

- (a) Any individual about whom the MWUCP finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (1) "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;
 - (2) "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;

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (3) "Native Americans" which includes persons who are American Indians, Eskimos, Aleut, or Native Hawaiians;
- (4) "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;
- (5) "Subcontinent Asian Americans" which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (6) "Women"; and
- (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

State is a political entity formed and governed under the U.S. constitution and/or a recipient of DOT funds.

States as used here includes the District of Columbia.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

WMATA means the Washington Metropolitan Area Transit Authority.

Washington Metropolitan Area Transit Authority Compact is an agreement, pursuant to Pub. L. No. 89-774, 80 Stat. 1324 (1966), between the District of Columbia, State of Maryland, and Commonwealth of Virginia to create the Washington Metropolitan Area Transit Authority (WMATA).

SECTION 2.0 - PROGRAM REQUIREMENTS

Section 2.1 Record Keeping and Reporting

- (a) The MWUCP shall transmit the Uniform Report of DBE Awards or Commitment and Payment to FTA at the required time.
- (b) The MWUCP shall provide data about its DBE program to FTA and FHWA as directed by the DOT operating administrations.
- (c) The MWUCP shall create a bidders list.

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (1) The purpose of this list is to provide the MWUCP with as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on Federally-assisted contracts for use in helping to set the overall goals.
- (2) (A) The MWUCP members must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on Federally-assisted contracts:
 - (i) Firm name;
 - (ii) Firm address;
 - (iii) Firm's status as a DBE or non-DBE;
 - (iv) Age of the firm; and
 - (v) The annual gross receipts of the firm.

(B) Gross receipts information may be obtained by asking each 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 firm.
- (3) The individual member of the MWUCP may acquire the information for its bidders list in a variety of ways. For example, it can collect the data from all bidders, before or after the bid due date. It can conduct a survey that will result in statistically sound estimate of the universe of **DBE** and non-**DBE** contractors and subcontractors who seek to work on its Federally-assisted contracts. The individual member may combine different data collection approaches (*e.g.*, collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).
- (c) MWUCP will provide comprehensive data, which shall include but not limited to its initial certification, about its DBE certification program to each of its member components on a monthly basis.
- (d) Pursuant to 49 CFR Part 26 109, the MWUCP will not release information that may be reasonably construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. This information can be released, upon written consent, to address issues concerning reciprocity and where the MWUCP must transmit the information to DOT in any certification appeal proceeding under section 26.89 in which the disadvantaged status of the individual is in question.
- (e) Notwithstanding any contrary provisions of state or local law, MWUCP will not release personal financial information submitted in response to the Personal Net Worth requirement to a third party (other than U.S. DOT) without the written consent of the submitter or a valid court subpoena.

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (f) *Record Keeping and Reports.* Participating members shall maintain their own records, recordings, assessments and statistics of DBE performance. The sitting chairperson, or his/her designee, shall be responsible for receiving the data and overseeing its compilation into an annual report and distribution to member agencies. A permanent record keeping site, for purposes of convenience, shall be determined by the members of the MWUCP.
- (g) The MWUCP will maintain and make available to interested persons its directories of certified DBEs in its program. The listing for each firm will include the address, phone number and the types of work the firm has been certified to perform as a DBE. The directory will be updated at least annually and the updated information will be made available to contractors and the public upon request. Websites to access our websites: www.wmata.com or www.metroopensdoors.com and <http://dbe.ddot.dc.gov>

Section 2.2 Home State Certification

- (a) In accordance with 49 CFR Part 26.81(d), a UCP shall not process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The MWUCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.
- (b) For WMATA the purposes of the MWUCP, "*home state*" consists of the jurisdictions that comprise the Interstate Compact: Prince George's and Montgomery counties in Maryland, the District of Columbia and the Virginia jurisdictions of Alexandria, Falls Church and Fairfax cities and Arlington, Fairfax and Loudoun counties. Further, prospective DBE firms located in the Interstate Compact local area are not required to be certified by another home state as a requirement for becoming certified as a DBE firm by the MWUCP.
- (c) DDOT firms not certified in their home states are not eligible for DBE certification by the MWUCP until such time that the applicant firm's home state certification is obtained and evidenced to the MWUCP.

Section 2.3 Program Administration

- (a) Metropolitan Washington Unified Certification Committee.
 - (1) *Members.* The MWUCP shall be administered by a Metropolitan Washington Unified Certification Program Committee. The total number of Committee Members shall be six (6). Membership on the Committee shall be the DBE Liaison or his/her designee, from each member entity, and two (2) representatives from WMATA and DDOT. The representatives will be appointed by the DBE Liaison from WMATA and DDOT. Vacancies will be filled by the DBE Liaisons.. (NOTE: It is recommended that the number of MWUCP voting members be changed to seven (7) to include representatives from DDOT

Disadvantaged Business Enterprise
Metropolitan Washington UCP

(CIVL), WMATA (PRMT), WMATA SBLPP, Finance PRMT, Construction/Engineering Departments.)

- (2) *Chairperson.* The Committee shall be chaired by the DBE Liaison for each member entity on an alternating basis for a period of one calendar year. The calendar year shall begin on January 1st. The designated Chairperson may appoint a committee member to serve as the Chairperson for a specific meeting(s) throughout the year, as necessary.
- (3) *Meetings.* The committee shall meet the second Thursday of each month. Meetings shall be held, on an alternating basis, in the offices of the participating members of the committee.
- (4) *Quorum.* A majority of the membership shall be a quorum for doing business. All matters before the committee shall be subjected to a majority vote. In the event of a tie vote, the question shall fail for lack of a majority vote.
- (5) *Amendments.* This Agreement shall only be amended upon the unanimous vote of the committee.

(b) Forms and Documents.

- (1) The members of the MWUCP shall use common forms and documents for the certification of prospective DBE firms. (2) Each form of the MWUCP may bear the name of each participating member. All documents for the external dissemination may bear the address, and telephone numbers of each participating member.

(c) Ad hoc Committees.

An Ad hoc committee may be required by the MWUCP to conduct certain business. This committee shall be established upon the unanimous vote of the Metropolitan Washington Unified Certification Program Committee. This committee will be staffed by an equal number of representatives from each participating member for the MWUCP. The Ad hoc committee shall have a chairperson to guide its affairs and ensure adherence to the appropriate provisions of their establishment and will make all necessary recommendations/reports to the Metropolitan Washington Unified Certification Program Committee.

(d) Over Concentration of DBEs.

- (1) If the MWUCP determines that the DBE firms are so over-concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, the MWUCP shall devise appropriate measures to address this over concentration.

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (2) MWUCP either alone or in concert with other recipients, institute additional measures which by example may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designated to assist DBEs in performing work outside of the specific field in which the MWUCP has determined that non-DBEs are unduly burdened. The MWUCP may also consider varying its use of contract goals, to the extent consistent with section 26.51 to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.
- (3) The MWUCP will obtain the approval of FHWA or FTA for the MWUCP's determination of over-concentration and the measures that the MWUCP devises to address it. Once approved, the measures become part of the Plan.

(e) Fostering Small Business Participation.

- (1) The MWUCP DBE program shall develop an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.
- (2) As part of this program element the MWUCP may include, but are not limited to, the following strategies:
 - (A) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).
 - (B) In multi-year design-build contracts or other large contracts (e.g., for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
 - (C) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
 - (D) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
 - (E) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

Section 2.4 Operations

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (a) *Separation of Function.* Each participating member of the MWUCP shall retain the responsibility for administering and operating its own DBE Program. Each participating member shall be responsible for conducting the certifications filed with the member by prospective DBE firms.
- (b) *Approvals and Denials.* Letters indicating the status and final disposition of applications for certification and re-evaluation will be the province of each member on behalf of the MWUCP.
- (f) *Training.* Each participating member shall bear the expense of providing training to its individual staff. This includes attendance at seminars, conferences and meetings where a fee is assessed upon participants.
- (g) *DBE Directory.* Each participating member shall bear the expense of providing and maintaining its own DBE Directory.

Section 2.5 Administrative Procedures

- (a) *Admission of New Members.* New members may be admitted to the MWUCP upon the unanimous consent of the membership. New members must agree to comply with 49 CFR Part 26 and this agreement and must also have a Federally-funded DBE Program, approved by the pertinent DOT administrative agency.
- (b) *Streamline Reciprocity Regional UCPs.* The MWUCP, with unanimous consent, may enter into agreements with other UCPs in order to form one or more regional UCPs.

Section 2.6 Finance

Each participating member of the MWUCP shall be responsible for its own financing, staffing and budget without recourse to the MWUCP for expenses of any kind, except that if there is an amendment to these provisions that allows the MWUCP to have a budget, the membership will determine such financial issues as expenses, reimbursements, fees and other considerations.

Section 2.7 Liability

Nothing contained in this agreement shall be construed or implied as creating any relationship between the signing parties other than the certification of Disadvantaged Business Enterprises. Each participating member shall indemnify the other, and the MWUCP, from practices committed by the participating member.

Section 2.8 Confidentiality

All financial information and other proprietary documentation may be shared among the membership and DOT or the respective FTA or FHWA when conducting a DBE Review. Financial and other proprietary documentation shall not be released to the third party, without the written consent of the firm that submitted the information pursuant to 49 CFR Part 26.109.

Section 2.9 Three (3)-year No Change and On-site Review

DBE firms shall be subject to a No Change Statement and On-site Review by the MWUCP every three (3) years to ensure that it is in compliance with 49 CRF Part 26.

Section 2.10 Certification Privilege

Pursuant to 26.83 (h), once the MWUCP has certified a DBE, it shall remain certified until and unless the MWUCP has removed its certification, in whole or in part, through the procedures of section 26.87. The MWUCP may not require DBEs to reapply for certification or require "recertification" of currently certified firms. However, the MWUCP may conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances (*e.g.*, of the kind requiring notice under paragraph 26.83 (i)), a complaint, or other information concerning the firm's eligibility. If the MWUCP has grounds to question the firm's eligibility, it may conduct an on-site review on an unannounced basis, at the firm's offices and jobsites.

Section 2.11 Removal of Eligibility or Certification

The MWUCP may remove the eligibility or certification of a DBE firm, in accordance with the procedures set forth in 49 CFR Part 26, section 87, this Agreement and the affected participating member's program plan. Removal of the eligibility or certification of a DBE firm may occur subject to Section 5.5 of this Agreement.

Section 2.12 Return of Applications

In the event that an incomplete application is received, the participating member shall:

- (a) Not complete an incomplete application for a prospective DBE firm. The participating member shall notify the prospective DBE firm with Instructions to guide the firm in filing a complete application.
- (b) If withdrawal by the applicant is requested at any time by the applicant prior to the recipient beginning the review and evaluation procedure the application will be returned.
- (c) Pursuant to 49 CFR Part 26.73 (c), a participating member may determine that a prospective DBE fails to cooperate with the certification process. In that event the participating member will notify the proposed DBE using contact email or address information provided by the prospective DBE allowing ten (10) business days from receipt of the notice to respond.

- (d) **Failure to Cooperate.** DBE firms and firms seeking DBE certification shall cooperate fully with recipient's request (and DOT requests) for information relevant to the certification process pursuant to 26.73 (2)(c).

Section 2.13 Application Status

Applications that are incomplete or that do not conform to home state policies are not to be processed and denied certification. Rather, such applications are to be returned to the firms pursuant to the provisions set forth in (d) and (e), above. An applicant may withdraw his/her application at any time prior to certification. For the purposes of reevaluation of an application for DBE certification, an applicant may withdraw his/her request for reevaluation at any time.

- (a) *Application Fees.* Members of the MWUCP shall determine, by unanimous vote, whether prospective DBE firms should be assessed an application fee and shall then determine the amount of the fee. In the event that fees are assessed, banking and other relevant matters must be decided prior to implementation and collection of such fees.
- (b) *Existing Certifications.* The MWUCP shall adopt each existing certification of participating members as though the certifications had been conducted under the provisions set forth herein. Certifications that are not in conformity with Part 26 shall be reevaluated, under the provisions of Part 26, prior to acceptance by MWUCP for its roll and directory.
- (c) *Certification Log.* The MWUCP shall maintain a roll of all certified DBE firms as presented by each member entity. This log shall be periodically provided to each member for purposes of audits and determinations of compliance with certification provisions.
- (d) *Audits.* Reviews shall be performed by the MWUCP of participating members, as necessary, to determine compliance with 49 CFR Part 26 certification standards. MWUCP members shall submit to MWUCP audits and cooperate fully in the matter.
- (e) *Records.* Copies of complete application documents and final disposition reports, including hearings and appeals, shall be maintained in the files of the MWUCP.
- (f) *Hearings and Appeals.* No participating member shall hold any hearings or accept any appeals concerning denial decisions. Such proceedings are within the purview of DOT. This does not include the informal hearing that may be requested in conjunction with the removal of eligibility for certification or removal of certification. Likewise, the MWUCP may not

conduct hearings of appeals of denial of certification of a prospective DBE firm.

Section 2.14 Out-of-State Applications

Applications that are received from out-of-state that do not conform to the home state policy shall be returned to the firm with instructions to first gain certification within their home state to become eligible for certification by the MWUCP. The Out-of-State applicant shall submit the following:

- (a) A completed MWUCP application form, including the Affidavit of Certification, as set forth in 49 CFR Part 26, Appendix F;
- (b) Personal Net Worth Statement;
- (c) Individual Federal Tax Return for the three (3) latest tax years;
- (d) Firm's Federal Tax Returns for the three (3) latest tax years; and
- (e) A copy of the latest Letter of Certification received by the applicant from its Home State.

SECTION 3.0 - MWUCP DBE DIRECTORY

Section 3.1 - MWUCP DBE Directory (26.31)

- (a) *Annual Directory Required.* MWUCP will make available an annually revised directory identifying all firms eligible to participate as DBEs in the MWUCP's DBE certification program. These directories will be made available at the following websites; <http://dbe.ddot.dc.gov> and www.metroopensdoors.com or www.wmata.com
- (b) *Directory Listings.* The listing for each firm shall include its address, contact person, email address, telephone/facsimile, FAX numbers, NAICS Codes, and types of work the firm has been certified to perform as a DBE.
- (a) *Distribution.* MWUCP shall make its directory available to anyone wishing to receive a copy. Interested parties may request the directory by writing, telephoning or visiting: Washington Metropolitan Area Transit Authority, DBE/Contract Compliance Branch, 600 Fifth Street, N.W., Washington, DC 20001, (202) 962-1168 or the District Department of Transportation, Office of Civil Rights, 515 M Street, SE., Washington, D.C. 20009, (202) 671- 0479.

SECTION 4.0 - CERTIFICATION STANDARDS

Section 4.1 - Eligibility and Burdens of Proof (26.61)

Only bona fide business concerns meeting the definition set forth in Section 1.5 and the criteria and standards set forth in 49 CFR Part 26, Subpart D, shall be eligible for certification as a DBE. To be certified, the following criteria must be met:

- (a) The applicant firm has the burden of demonstrating, by a preponderance of the evidence, that it meets Part 26 requirements concerning group membership or individual disadvantage, business size, ownership and control.
- (b) The MWUCP must rebuttably presume that members of the designated groups identified in §26.67(a) are socially and economically disadvantaged. This means they do have the burden of proving to the MWUCP that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in §26.67(a). Applicants do have the obligation to provide the MWUCP information concerning their economic disadvantage (*See* §26.67).
- (c) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving, by a preponderance of the evidence, that they are socially and economically disadvantaged (26.61(d) See Appendix E of this part).
- (d) The MWUCP in making determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis), shall consider all facts in the record, viewed as a whole.

Section 4.2 Group Membership (26.63)

- (a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (*See* § 26.61 (c)), the MWUCP has a well founded reason to question the individual's claim of membership in that group, the MWUCP must require the individual to present additional evidence that he or she is a member of the group.
 - (2) The MWUCP must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (c) of this section.
 - (3) In implementing this section, the MWUCP must take special care to ensure that it does not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate §26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.
- (b) In making such a determination, the MWUCP must consider whether the individual has held himself or herself out to be a member of the group over a long period of time prior to making application for certification and whether the individual is regarded as a

Disadvantaged Business Enterprise
Metropolitan Washington UCP

member of the group by the relevant community. The MWUCP may require the applicant to produce appropriate documentation of group membership.

- (1) If the MWUCP determines that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.
- (2) MWUCP decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.

Section 4.3 Business Size (26.65)

- (a) To be eligible for certification by MWUCP as a DBE, the firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. Current SBA business size standards found in 13 CFR Part 121 will be applied by the MWUCP appropriate to the type(s) of work the firm seeks to perform on DOT-assisted contracts.
- (b) Even if the requirements of paragraph (a) of this section are met, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations, (see 13 CFR 121.402) over the firm's previous three years, pursuant to the federal size standard.

Section 4.4 Presumption of Disadvantage (26.67)

- (a) Citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are rebuttably presumed to be socially and economically disadvantaged individuals. The MWUCP requires the applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.
- (b) Each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, must submit a signed, notarized statement of personal net worth, with appropriate documentation and must not exceed the \$1.32 million.
 - (1) The firm seeking certification has the burden of demonstrating to the MWUCP, by a preponderance of the evidence, that it meets the requirements of 49 CFR PART 26.61(b) concerning group membership or individual disadvantage, business, ownership and control.
 - (2) Pursuant to 49 CFR Part 26.61(e), the MWUCP will make a determination concerning whether the individual s and firms have met their burden of proof demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on

an individual basis) by considering all the facts in the record, viewed as a whole.

- (3) DBE firms must cooperate with the MWUCP requests for information relevant to the certification process.

(c) The following are excluded when determining net worth:

- (1) an individual's ownership interest in the applicant firm;
- (2) the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).
- (3) a contingent liability to reduce an applicant owner's net worth;
- (4) assets held in a vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time with significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

Section 4.5 Rebuttal of Presumption of Disadvantage (26.67(b))

- (a) If the statement of personal net worth that is submitted by the owner of an applicant under paragraph 4.5(b) of this section shows that the individual personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. A proceeding under Section 4.5(b) is not required in order to rebut the presumption of economic disadvantage in this case.
- (b) If there is a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged, the MWUCP may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. MWUCP's proceeding, as prescribed by Section 26.87 of 49 CFR Part 26, includes the following procedures:
 - (1) MWUCP has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. MWUCP will require the individual to produce information relevant to the determination of his or her disadvantage.
 - (2) When an individual's presumption of social and economic disadvantaged status has been rebutted, his or her ownership and control of the firm in question shall not be used for purposes of DBE eligibility, unless and until, he or she, makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is determination that the individual personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the

program and cannot regain eligibility by making an individual showing of disadvantage.

Section 4.6 Individual Determinations of Social and Economic Disadvantage (26.67(d))

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE Certification. The MWUCP must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE Certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to the MWUCP, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. Any individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. Applicants are required to provide sufficient information to permit a thorough determination of individual economic disadvantage pursuant to guidelines the guidance of Appendix E of this Part.

Section 4.7 8(a) and SDB Firms (26.84) and Modified Certification Reciprocity Program (MCRP) Firms

In lieu of conducting its own certification proceeding, and in accordance with Section 5.1, (d) MWUCP will accept eligible DBE as established under 49 CFR 26.83:

- (a) MWUCP may accept the certification of another DOT recipient for this purpose.
- (b) The MWUCP recognizes that the participating Members are partners in the Modified Certification Reciprocity Program (MCRP) that was enacted at the September 12, 2008, regional summit by Maryland's Governor- Martin O'Malley, Virginia's Governor ThomasKaine, the District of Columbia's Mayor Adrian Fenty, the General Manager of the Washington Metropolitan Area Transit Authority- John B. Catoe, and the Washington Metropolitan Airports Authority, Vice President Stanley Baker to streamline the certification process for local Disadvantaged Business Enterprise(DBE) firms and Airport Concession Disadvantaged Enterprises (ACDBE) wanting to participate in federally funded transportation projects throughout the Washington Metropolitan region.
- (c) Pursuant to the MCRP, any Maryland, Virginia or District of Columbia firm that is certified as a DBE/ACDBE in its Home State by the Maryland Department of Transportation (MDOT), the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) and the Metropolitan Washington Airports Authority (MWAA) is able to apply for certification with one of the Participating Member through the streamlines process.

- (1) Under the MCRP, DBE firms applying for certification that are already certified by one of these entities above will need to submit only the following documents to one of the Participating Members to initiate the certification process: the Uniform Certification Application, a Personal Net Worth statement, individual current federal tax return for latest tax year, firm's current federal tax return for the latest tax year and a copy of the current letter of certification received by the DBE/ACDBE from its Home State and a Certificate of Good Standing from the Maryland State Department of Assessments, and Taxation, where applicable. The Reciprocity Member may request additional information from the applicant, if needed, to complete the certification process.
- (2) Once the applicant has submitted the appropriate information, the Participating Member will request a copy of the On-site Report from the Home State Certifier. The Participating Member will evaluate the documents provided by the applicant along with the onsite report from the Home State Certifier to ensure the following: the firm's applications complete, the disadvantaged owner's of the firm personal net worth(s) does not exceed the \$1.32 million, the firms average gross receipts for the last three years (from the date of the DBE application) does not exceed the SBA size limits not the DBE/ADBDE Program limits nor the DOT size limit, as applicable, and the assigned NAICS codes of the applicants from the Home State Certifier meet the needs of the Participating Member. The reciprocity process will be completed within a minimum of 30 days.
- (3) If the correct documents are present and the applicant meets the standards of the preceding paragraph and no additional information is needed, the DBE Liaison for the Participating Member may certify the firm under the MCRP and add the firm to its directory, pursuant to Section 3.1 MWUCP DBE Directory, of this Agreement. The decisions of the DBE Liaison concerning MCRP Certifications will be reflected in the semi-annual report provided to the MWUCP Committee.
- (4) If the Home State has not conducted an on-site visit of the firm within three years of the submission date of the application, the Participating Member will request the Home State to conduct a new on-site. If the Home State Certifier is unable to conduct the on-site the applicant will be removed from the MCRP and be processed pursuant to Section 4.7 of this Agreement.
 - (A) If, upon review of the Home State On-site Report and the applicant's documents, its Member determines that the applicant does meet the requirements for certification, the Participating Member will consult with the Home State Certifier to: clarify the basis for the Home State's determination of eligibility for certification and clarify the specific goods/services the applicant firm is certified to provide, especially where the assigned NAICS codes may cover broad categories.

(B) If upon consultations with the Home State Certifier, it is determined that the applicant does not meet the requirements for certification, the Participating Member may elect to remove the applicant from the MCRP and be processed pursuant to Section 4.7 of this Agreement or the Participating Member may deny certification. In the case of a denial, the Participating Member will send a copy of the Letter of Denial to the Home States with 30 days of the date of the letter.

(d) Should the denial be appealed to the USDOT, the Participating Member will also send a copy of any final determination made by the US Department of Transportation to the Home State within 30 days of the date of the determination.

Section 4.8 Rules Governing Ownership Determinations (26.69)

- (a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, the MWUCP must consider all the facts, in the record, viewed as a whole.
- (b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.
 - (1) In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
 - (2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.
 - (3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.
- (c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- (d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are

Disadvantaged Business Enterprise
Metropolitan Washington UCP

regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if -

- (1) the beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
 - (2) the beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policymaking and daily operational activities of the firm. Assets held in a revocable living trust will be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.
- (e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- (f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:
- (1) The owner's expertise must be:
 - (A) in a specialized field;
 - (B) of outstanding quality;
 - (C) in areas critical to the firm's operations;
 - (D) indispensable to the firm's potential success;
 - (E) specific to the type of work the firm performs; and
 - (F) documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
 - (2) The individual whose expertise is relied upon must have a significant financial investment in the firm.
- (g) MWUCP will always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual-

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (1) As a result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
 - (2) Through inheritance, or otherwise because of the death of the former owner.
- (h) (1) MWUCP shall presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is-
- (A) involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
 - (B) involved in the same or similar line of business; or
 - (C) engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
- (2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate, by clear and convincing evidence, that-
- (A) the gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
 - (B) the disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.
- (i) MWUCP shall apply the following rules in situations in which marital assets form a basis for ownership of a firm:
- (1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the MWUCP shall deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. MWUCP does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.
- (j) MWUCP may consider the following factors in determining the ownership of a firm. However, the MWUCP shall not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because –
- (1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in Paragraph (h) of this section;
 - (2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
 - (3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, MWUCP shall give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

Section 4.9 Rules Governing Determinations Concerning Control (26.71).

- (a) In determining whether socially and economically disadvantaged owners control a firm, the MWUCP shall consider all the facts in the record, viewed as a whole.
- (b) Only an independent business will be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
 - (1) In determining whether a potential DBE is an independent business, the MWUCP shall scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - (2) MWUCP shall consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.
 - (3) MWUCP shall examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (4) In considering factors related to the independence of a potential DBE firm, the MWUCP must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.
- (c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co signature on documents as provided for in Section 26.69(j) (2).
- (d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
 - (1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
 - (2) In a corporation, disadvantaged owners must control the board of directors.
 - (3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.
- (e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers and/or directors. Such individuals shall not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- (f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority shall be revocable, and the socially and economically disadvantaged owners shall retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs shall be such that MWUCP can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management and policy.
- (g) The socially and economically disadvantaged owners shall have an overall understanding of, and managerial and technical competence and experience directly

related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners shall have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management and policymaking. Generally, expertise limited to office management, administration or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

- (h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control the potential DBE firm of that type shall possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, MWUCP shall not deny certification solely on the ground that the person lacks the license or credential. However, MWUCP may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.
- (i)
 - (1) MWUCP may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. MWUCP may determine that a firm is controlled by its socially and disadvantaged owners although that owner's remuneration is lower than that of some other participants in the firm.
 - (2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, MWUCP may consider the difference in the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.
- (j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or week/ends, if the individual controls it all the time it is operating.

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (k) (1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, MWUCP shall make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as the applicant does in other situations, without regard to whether or not the other persons are immediate family members.
- (2) If MWUCP cannot determine that the socially and economically disadvantaged owners - as distinct from the family as a whole - control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- (l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm shall demonstrate to MWUCP, by clear and convincing evidence, that:
 - (i) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
 - (ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.
- (m) In determining whether the firm is controlled by its socially and economically disadvantaged owners, MWUCP will consider whether the firm owns equipment necessary to perform its work. However, MWUCP shall not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.
- (n) MWUCP shall grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to MWUCP only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. MWUCP will not, in this situation, require that the firm be recertified or submit a new application for certification, but MWUCP shall verify that disadvantaged owner's control of the firm in the additional type of work.

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (o) A business operating under a franchise or license agreement will be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, MWUCP should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
- (p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
- (q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

Section 4.10 Other Rules Affecting MWUCP DBE Certification (26.73)

- (a)
 - (1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as a DBE. Except as provided in paragraph (a) (2) of this section, MWUCP may not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.
 - (2) MWUCP may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.
- (b)
 - (1) MWUCP must evaluate the eligibility of a firm on the basis of present circumstances. MWUCP shall not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.
 - (2) The MWUCP must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not

Disadvantaged Business Enterprise
Metropolitan Washington UCP

demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this section, the firm is eligible for certification.

- (c) DBE firms and firms seeking DBE certification shall cooperate fully with MWUCP requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.
- (d) Only firms organized for profit will be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.
- (e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm - even a DBE firm - cannot be an eligible DBE.
 - (1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, MWUCP will certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
 - (2) MWUCP may certify such a subsidiary only if there is cumulative 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals.
- (f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.
- (g) Pursuant to 49 CFR 26.73(g) the MWUCP will not require a DBE firm to be prequalified as a condition for certification provided that it requires all firms that participate in its federal contracts and subcontracts to be prequalified.
- (h) A firm that is owned by an Indian tribe, or Native Hawaiian organization as an entity, rather than by Indians, or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR, Section 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in section 26.71.
- (i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:
- (A) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
 - (B) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and
 - (C) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.
- (2) As a recipient to whom an ANC-related entity applies for certification, the MWUCP does not use the DOT uniform application form (*See Appendix F of this part*). The MWUCP shall must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (1) (A) of this section. The MWUCP shall also obtain sufficient information about the firm to allow it to administer the DBE program (*e.g.*, information that would appear in the DBE Directory).
- (3) If an ANC-related firm does not meet all the conditions of paragraph (1)(A) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

SECTION 5.0 - CERTIFICATION PROCEDURES

Section 5.1 Procedures to be Followed in Making Certification Decisions (26.83)

- (a) MWUCP shall ensure that only firms certified as eligible DBEs under section 26.83 participate in this program.
- (b) MWUCP shall determine the eligibility of firms as DBEs consistent with the standards set forth by 49 CFR Part 26.
- (c) MWUCP shall take all the following steps in determining whether a DBE firm meets the prescribed standards:

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (1) Perform an on-site visit to the offices of the firm; interview the principal officers of the firm and review their resumes and/or work histories. MWUCP shall also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation within the Metropolitan Washington, D.C. area. MWUCP may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
- (2) If the firm is a corporation with stock, MWUCP will analyze the ownership of stock in the firm;
- (3) If the firm is a partnership or limited liability company, MWUCP will analyze the ownership interests in the firm;
- (4) Analyze the bonding and financial capacity of the firm;
- (5) Determine the work history of the firm, including the contracts it has received and work it has completed;
- (6) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;
- (7) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- (8) Required potential DBEs to complete and submit an appropriate form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.
 - (A) MWUCP shall use the application form provided in Appendix F to this part without change or revision. However, MWUCP may provide in our DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.
 - (B) If an SBA 8(a) firm applies to the MWUCP, the 8(a) firm may submit its SBA application package in lieu of a new DBE application package. The MWUCP shall conduct an on-site review of the firm.
 - (C) The MWUCP shall request additional information from the applicant to ensure that all Part 26 requirements are met and that all information has been updated.
 - (D) MWUCP will make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state or local law

to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

- (E) MWUCP shall review all information on the form prior to making a decision about the eligibility of the applicant firm.
 - a
- (d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information which the MWUCP has obtained about the firm, (e.g., including application materials or the report of an on-site visit, if MWUCP has made one to the firm), the MWUCP must make the information available to the other recipient. MWUCP will share information regarding a DBE applicant's denial for certification with other recipients, as appropriate.
- (e) Except as provided in Sec 4.11, 8(a) and SDB firms (26.85) and in Reciprocity firms (III), when another DOT recipient has certified a firm, MWUCP will make an independent certification decision based upon documentation provided by the other recipient, augmented by any additional information MWUCP requires the applicant to provide. This section is consistent with section 26.86 (a) through (k).
- (f) MWUCP shall safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable federal, state, or local law.
- (g) Once MWUCP has certified a DBE firm, it shall remain certified unless and until its certification has been removed through the procedures of Section 26.87. MWUCP may not require DBEs to reapply for certification or require "recertification" of currently certified firms. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (g) of this section), a complaint, or other information concerning the firm's eligibility. If you have grounds to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and jobsites. .
- (h) The DBE must inform MWUCP in writing of any change in circumstances affecting the firm's ability to meet size, disadvantaged status, ownership, or control requirements under 49 CFR Part 26 or any material change in the information provided in the firm's application form.
 - (1) Changes in the management responsibility among members of a limited liability company are covered by this requirement.
 - (2) The DBE must attach supporting documentation describing in detail the nature of such changes.

- (3) The notice must be in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. The DBE shall provide the written notification-within 30 days of the occurrence of the change. If the DBE fails to make timely notification of such a change, the DBE will be deemed to have failed to cooperate under 49 CFR Part 26.109(c).
- (i) Certified DBEs shall provide to the MWUCP, every year on the anniversary date of certification, an affidavit sworn to by the firm's owner(s) before a person who is authorized by state or local law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26 or any material changes in the information provided in its application form, except for changes about which the DBE has notified MWUCP under Paragraph (i) of this section. The affidavit shall specifically affirm that the DBE continues to meet SBA business size criteria and overall gross receipts cap of Part 26, documenting this affirmation with supporting documentation of the DBE's size and gross receipts. A DBE will be deemed to have failed to cooperate under 49 CFR 29.109(c), if the DBE fails to provide this affidavit in a timely manner.
- (j) MWUCP shall make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under 49 CFR Part 26. MWUCP may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. MWUCP may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. MWUCP's failure to make a decision by the applicable deadline shall be deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under 49 CFR 26.89.
- (k) MWUCP must advise each applicant within 30 days from its receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.
- (l) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before the MWUCP have issued a decision on the application, the applicant can resubmit the application at any time. The MWUCP shall not apply the waiting period provided under §26.86(c) of this part before allowing the applicant to resubmit its application. However, the MWUCP may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. MWUCP may also apply the waiting period provided under §26.86(c) of this part to a firm that has established a pattern of frequently withdrawing application before the MWUCP makes a decision.

Section 5.2 Interstate Certification (26.85)

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (a) This section applies with respect to any firm that is currently certified in its home state.
- (b) When a firm currently certified in its home state ("State A") applies to MWUCP for DBE certification, the MWUCP may, at its discretion, accept State A's certification and certify the firm, without further procedures.

(1) To obtain certification in this manner, the firm must provide the MWUCP a copy of its certification notice from its home state.

(2) Before certifying the firm, the MWUCP shall confirm that the firm has a current valid certification from its home state. The MWUCP can do so by reviewing the home state electronic directory or obtaining written confirmation from the home state.

- (c) In any situation in which the MWUCP chooses not to accept the home states certification of a firm as provided in paragraph (b) of this section, the applicant firm must provide the MWUCP information in paragraphs (c)(1) through (4) of this section.

(1) The applicant firm must provide to the MWUCP a complete copy of the application form, all supporting documents, and any other information it submitted to the home state or any other state related to your firm's certification. This includes affidavits of no change (*see* §26.83(j)) and any notices of changes (*see* §26.83(i)) that was submitted to the home state, as well as any correspondence had with the home state's UCP or any other recipient concerning the firms application or status as a DBE firm.

(2) The applicant firm must also provide to MWUCP any notices or correspondence from states other than the home state relating to its status as an applicant or certified DBE in those states. For example, if the applicant firm has been denied certification or decertified in another state, or subject to a decertification action there, it must inform MWUCP of this fact and provide all documentation concerning this action.

(3) If applicant firm have filed a certification appeal with DOT (*see* §26.89), it must inform the MWUCP of the fact and provide its letter of appeal and DOT's response to MWUCP.

(4) The applicant firm must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

(A) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by §26.85(c) (1), is an identical copy of the information submitted to the home state.

(B) If the on-site report from the home state supporting the applicant firm's certification in the home state is more than three years old, as of the date of its application to the MWUCP, the MWUCP may require that the

Disadvantaged Business Enterprise
Metropolitan Washington UCP

affidavit also affirm that the facts in the on-site report remain true and correct.

(d) MWUCP after receiving from an applicant firm all the information required by paragraph (c) of this section, shall take the following actions:

(1) Within seven days contact the home state and request a copy of the site visit review report for the firm (*see* §26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. If in the instance that the MWUCP is the home state, it shall transmit this information to State B within seven days of receiving the request.

(2) Determine whether there is good cause to believe that the home state's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:

(A) Evidence that the home state's certification was obtained by fraud;

(B) New information, not available to the home state at the time of its certification, showing that the firm does not meet all eligibility criteria;

(C) The home state's certification was factually erroneous or was inconsistent with the requirements of this part;

(D) The State laws of the MWUCP require a result different from that of the State law of the home state.

(E) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.

(3) Unless the MWUCO determines that there is good cause to believe that the home state's certification is erroneous or should not apply in your State, it shall, no later than 60 days from the date on which all the information was received from the applicant firm required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on its directory of certified firms.

(4) If MWUCP determines that there is good cause to believe that the home state's certification is erroneous or should not apply in the District of Columbia, it shall, no later than 60 days from the date on which all the information was received from the applicant firm required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.

(A) This notice must state with particularity the specific reasons why MWUCP believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to the home state with respect to these reasons.

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (B) The firm may elect to respond in writing, to request an in-person meeting with MWUCP's decision maker to discuss the MWUCP's objections to the firm's eligibility, or both. If the firm requests a meeting, the MWUCP shall schedule the meeting to take place within 30 days of receiving the firm's request.
- (C) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by the MWUCP's notice. The firm is not otherwise responsible for further demonstrating its eligibility to the MWUCP.
- (D) The decision maker for the MWUCP must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.
- (E) MWUCP shall issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.
- (F) The firm's application for certification is stayed pending the outcome of this process.
- (G) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under §26.89 of this part.
- (e) If the MWUCP has not received from the home state a copy of the site visit review report by a date 14 days after it has made a timely request for it, the MWUCP may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, the MWUCP shall, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.
- (f)(1) When the MWUCP denies a firm's application, reject the application of a firm certified in its home state or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, the MWUCP shall make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. The MWUCP shall enter the following information:
 - (A) The name of the firm;
 - (B) The name(s) of the firm's owner(s);
 - (C) The type and date of the action; and
 - (D) The reason for the action.

Disadvantaged Business Enterprise
Metropolitan Washington UCP

(2) The MWUCP shall check the DOCR Web site at least once every month to determine whether any firm that is applying for certification or that it has already certified is on the list.

(3) For any such firm that is on the list, the MWUCP shall promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, the MWUCP shall provide a copy of the decision to the requesting UCP within 7 days of receiving the request. Is the MWUCP receives the decision, it shall then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

Section 5.3 Rules Governing MWUCP's Denial of Initial Requests for Certification (26.86)

- (a) When MWUCP denies a request by a firm, which is not currently certified with MWUCP, to be certified as a DBE, MWUCP shall provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based shall be made available to the applicant, on request.
- (b) When a firm is denied certification, twelve months must elapse before the firm may reapply to MWUCP for certification. The time period for reapplication begins to run on the date the explanation required by Paragraph (a) of this Section is received by the firm.
- (c) When MWUCP makes administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under 49 CFR 26.89:

Section 5.4 Procedures to Remove a DBE's Eligibility (26.87)

- (a) Ineligibility Complaints.
 - (1) Any person may file with MWUCP a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. MWUCP is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint shall include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. The confidentiality of a complainant's identity shall be protected as provided in 49 CFR 26.109 (b).
 - (2) The DBE Liaison or designee shall review its records concerning the firm, any material provided by the firm and the complainant, and other available information. The DBE Liaison or designee may request additional information from the firm or conduct any other investigation that MWUCP deems necessary.
 - (3) If it is determined, based on its review, that there is reasonable cause to believe that the firm is ineligible, the DBE Liaison shall provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If the DBE Liaison or designee determines that such

Disadvantaged Business Enterprise
Metropolitan Washington UCP

reasonable cause does not exist, MWUCP shall notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause shall specifically reference the evidence in the record on which each reason is based.

(b) Participating Member - Initiated Proceedings.

If, based on the notification by the firm of a change in its circumstances or other information that comes to MWUCP's attention, MWUCP determines that there is reasonable cause to believe that a currently certified firm is ineligible, MWUCP shall provide written notice to the firm that MWUCP proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause shall specifically reference the evidence in the record on which each reason is based.

(c) U.S. DOT Directive to Initiate Proceeding.

- (1) If the FTA and FHWA determines that information in the MWUCP's certification records, or other information available to the FTA and the FHWA, provides reasonable cause to believe that a firm MWUCP has certified does not meet the eligibility criteria of 49 CFR Part 26, the FTA and FHWA may direct MWUCP to initiate a proceeding to remove the firm's certification.
- (2) The FTA must provide to MWUCP and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
- (3) MWUCP shall immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) Decertification Hearing.

If MWUCP determines that there is reasonable cause to remove a DBE firm's eligibility, as provided in Paragraph (a), (b), or (c) of this section, the MWUCP shall do the following: (1) provide written notice to the firm that it proposes to find the firm ineligible; (2) setting forth the reasons for the proposed determination; and (2) give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

- (1) During the hearing, the MWUCP bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.
- (2) The MWUCP shall maintain a complete record of the hearing, by any means acceptable under the laws of the District of Columbia for the retention of a verbatim record of an administrative hearing. If there is a 49 CFR Part 26.89 appeal to DOT, MWUCP shall provide a transcript of the hearing to DOT and, on

Disadvantaged Business Enterprise
Metropolitan Washington UCP

request, to the firm. MWUCP shall retain the original record of the hearing. MWUCP will charge the firm only for the cost of copying the record.

- (3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, MWUCP bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as MWUCP would during a hearing. The panel shall be comprised of persons representing each jurisdiction that constitutes the member-components of MWUCP.

(e) Separation of Functions.

MWUCP must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

- (1) The MWUCP shall select a Chairman and two members to constitute an Decertification Panel.
- (2) The Chairman of the Decertification Hearing Panel shall be an individual who is knowledgeable about the certification requirements of MWUCP's DBE program and 49 CFR Part 26.
- (3) The MWUCP shall forward all files, records, documents and information to the Chairman of the Decertification Hearing Panel to review 14 days prior to the hearing date.
- (4) The Decertification Hearing Panel shall prepare a written decision, based upon the documents and oral testimony presented and forward it to the MWUCP 10 days after the hearing.

(f) Grounds for Decertification Decision.

MWUCP shall not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to MWUCP at the time of its certification of the firm. MWUCP will base such a decision only on one or more of the following:

- (1) Changes in the firm's circumstances since the certification of the firm by MWUCP that render the firm unable to meet the eligibility standards of this part;
- (2) Information or evidence not available to MWUCP at the time the firm was certified;

Disadvantaged Business Enterprise
Metropolitan Washington UCP

- (3) Information that was concealed or misrepresented by the firm in previous certification actions by MWUCP or another recipient;
 - (4) A change in the certification standards or requirements of the Department since the firm was certified; or
 - (5) A documented finding that MWUCP's determination to certify the firm was factually erroneous.
- (g) Notice of Decision.

Following its decision, the MWUCP forwards to the firm written notice of its decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of MW UCP's decision and, under 49 CFR Part 26.89, the availability of an appeal to the Department of Transportation. MWUCP shall send copies of the notice to the complainant in an ineligibility complaint or to the FTA, when it has directed MWUCP to initiate the proceeding.

(h) Status of the Firm During Proceeding.

- (1) A firm remains an eligible DBE during MWUCP's proceeding to remove its eligibility.
- (2) The firm does not become ineligible until the issuance of the notice provided for in Paragraph (g) of this Section.

(i) Effects of Removal of Eligibility.

MWUCP shall take the following action when removing a firm's eligibility.

- (1i) When a prime contractor has made a commitment to use the ineligible firm, or WMATA or DOT has made a commitment to use a DBE prime contractor, but a subcontract or contract has not been executed before MWUCP issues the decertification notice provided for in Paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. MWUCP shall direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to MWUCP that it has made a good faith effort to do so.
- (2) If a prime contractor has executed a subcontract with the firm before MWUCP has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where WMATA, DPW or DDOT has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after MWUCP has issued

the notice of its ineligibility shall not count toward MWUCP's overall goal, but will count toward the contract goal.

- (3) Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, MWUCP will continue to count its participation on that contract toward overall and contract goals.

(k) Availability of Appeal.

After the MWUCP removes a firm's eligibility under this section, the firm may file an appeal to the Department of Transportation pursuant section 26.89.

Section 5.5 Actions the MWUCP Will Take Following US DOT Certification Appeal Decisions (26.91)

- (a) If the MWUCP is the entity from whose action an appeal under 49 CFR 26.89 is taken, the decision is binding. It is not binding on other recipients.
- (b) If the USDOT determination under 49 CFR 26.89 is applicable, the MWUCP shall take the following action:
 - (1) If the USDOT determines that MWUCP erroneously certified a firm, MWUCP shall remove the firm's eligibility on receipt of the determination, without further proceedings on MWUCP's part. The consequences of a removal of eligibility set forth in Part 26.87(i) will take effect on the date of MWUCP's receipt of the USDOT's determination.
 - (2) If USDOT determines that MWUCP erroneously failed to find reasonable cause to remove the firm's eligibility, MWUCP shall expeditiously commence a proceeding to determine whether the firm's eligibility should be removed as provided in section 26.87.
 - (3) If US DOT determines that MWUCP erroneously declined to certify or removed the eligibility of the firm, MWUCP shall certify the firm, effective on the date of receipt of the Department's written notice of the
 - (4) If US DOT determines that MWUCP erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, MWUCP shall take appropriate corrective action as determined by the Department.
 - (5) If US DOT affirms MWUCP's determination, no further action is necessary.

SECTION 6.0 STANDARD OPERATING PROCEDURES

Section 6.1 Incomplete Applications for Certification of DBE Firms

- (a) MWUCP shall not proceed to certify any DBE firm that does not provide a fully completed application for certification, inclusive of all statutory and MWUCP required materials, information and documents, in the manner or format indicated as acceptable by MWUCP.
- (b) Applications for initial certification determined to be incomplete shall be returned, in their entirety, to the applicant firm without any amount of processing except that necessary to establish a checklist to indicate to the applicant the deficiencies that caused the application to be returned.
- (c) Applications returned for incompleteness shall not be entered upon MWUCP records as an application having been received or provided a tracking identification number or symbol.
- (d) In circumstances involving incomplete applications for re-evaluation, the MWUCP shall follow the procedure set forth in paragraphs (a) and (b) of this section. In the event that an incomplete application for a firm's Three Year Review is returned to the applicant and its Three Year Review date occurs in the interim, the DBE firm will be given by letter an additional ninety (90) days from the date of its three year anniversary to provide the necessary documentation needed to continue the review. If the additional 90 days pass and the DBE firm has not submitted the required documents, the firm will be processed pursuant to Section 6.3, Expired Certifications.

Section 6.2 Elapsed Certifications

- (a) Where a DBE firm's certification has elapsed without the firm submitting the necessary information for the MWUCP to conduct a Three Year (3) Review of the firm, the MWUCP will give notice to the DBE firm that it has sixty (60) days from the date of the notice to submit the necessary documentation. If the DBE firm does not respond within the sixty (60) days, the firm will be required to submit a full application and all of the necessary documents. The firm shall be given an additional sixty (60) to submit the full application.
- (b) In the event that a certified DBE has timely filed an application for re-evaluation with MWUCP and same is not processed prior to the expiration due date, the DBE firm shall continue to enjoy the benefits of certification as though the firm had been re-evaluated in a timely manner by MWUCP.

Section 6.3 Uniform Application Form

The participants in the MWUCP will use a single application form. The application form will be used without modification for DBE eligibility. The application for DBE certification may be

received in the offices of any MWUCP participant. Processing of the uniform application shall be the responsibility of the MWUCP member entity that received it.

Section 6.4 Filing Date

Registration and filings shall be considered filed or registered as of the date and time stamp affixed by the electronic service for purposes of determining whether a registration or filing is timely.

SECTION 7.0 COMPLIANCE AND ENFORCEMENT

Section 7.1 Enforcement Actions Applicable in FTA/FHWA Programs (26.103)

The provisions of this section apply to enforcement actions under FTA and FHWA .

- (a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
- (b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.
- (c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that MWUCP , as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs the MWUCP to reply within 30 days concerning whether it wishes to begin conciliation.
- (d) *Conciliation.*
 - (1) If MWUCP request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of the request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

- (2) If MWUCP and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, MWUCP remains eligible for FTA or FHWA financial assistance.
- (3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If MWUCP fail to carry out the terms of a conciliation agreement, it is in noncompliance.
- (4) If MWUCP does not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.*

- (1) Enforcement actions are taken as provided in this subpart.
- (2) Applicable findings in enforcement proceedings are binding on all DOT offices.

Section 7.2 Rules Governing Information, Confidentiality, Cooperation, Intimidation and Retaliation (26.109)

(a) *Availability of Records.*

- (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts(5 U.S.C. 552 and 552a). The Department will make available to the public any information concerning the DBE program release of which is not prohibited by federal law.
- (2) Notwithstanding any provision of Federal or state law, the MWUCP shall not release information that may not be reasonably construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, the MWUCP shall transmit this information to DOT in any certification appeal proceeding under Section 26.89 or to any other state to which the individual's firm has applied for certification under Section 26.85.

- (b) *Confidentiality of Information on Complainants.* Notwithstanding the provisions of Paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other

parties, the complainant shall be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

- (c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).
- (d) *Intimidation and Retaliation.* MWUCP, a contractor, or any other recipient in the program shall not intimidate, threaten, coerce or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If any entity violates this prohibition, it is in noncompliance with this part.

This Unified Certification Agreement accepted and agreed to by and between the Washington Metropolitan Area Transit Authority and the District Department of Transportation.

By: _____
Heather A. Obora, Chief Procurement Officer
Office of Procurement and Materials
Washington Metropolitan Area Transit Authority

Date: _____

By: _____
Terry Bellamy, Director
District Department of Transportation

Date: _____

ATTACHMENT 13
DBE CERTIFICATION APPLICATION &
INSTRUCTIONS

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM UNIFORM CERTIFICATION APPLICATION**

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices – not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.

- (4) State the date on which you and/or each other owner took ownership of the firm.
- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for profit."
NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.
- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.
- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.
- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.
- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.
- (2) Check the appropriate box that indicates whether at present, or at any time in the past:
 - (a) Your firm has been a subsidiary of any other firm;
 - (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
 - (c) Your firm has owned any percentage of any other firm; and
 - (d) Your firm has had any subsidiaries of its own.
- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.

- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

- (1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
 - (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
 - (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
 - (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
 - (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
 - (6) Office management;
 - (7) Marketing and sales;
 - (8) Purchasing of major equipment;
 - (9) Signing company checks (for any purpose); and
 - (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
- (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
 - (2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
 - (3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
 - (4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.
- E. Financial Information**
- (1) **Banking Information**
 - (a) State the name of your firm's bank.
 - (b) State the main phone number of your firm's bank branch.
 - (c) State the address of your firm's bank branch.
 - (2) **Bonding Information**
 - (a) State your firm's Binder Number.
 - (b) State the name of your firm's bond agent and/or broker.
 - (c) State your agent's/broker's phone number.
 - (d) State your agent's/broker's address.
 - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm.**
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any.**
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working.**
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.
- AFFIDAVIT & SIGNATURE**
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

① **Should I apply?**

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② **Is there an easier way to apply?**

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.

NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.

③ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

④ **Where can I find more information?**

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indexableofsize.html> (provides a listing of NAICS codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit?
		<input type="checkbox"/> Yes, on ___ / ___ / ___ State: _____ <input type="checkbox"/> No
	<input type="checkbox"/> 8(a) <input type="checkbox"/> SDB	⊗ STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?

Yes, on ___ / ___ / ___ No

If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:			
(3) Phone #:	(4) Other Phone #:	(5) Fax #:			
(6) E-mail:		(7) Website <i>(if have one)</i> :			
(8) Street address of firm <i>(No P.O. Box)</i> :	City:	County/Parish:	State:	Zip:	
(9) Mailing address of firm <i>(if different)</i> :	City:	County/Parish:	State:	Zip:	

B. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID <i>(if any)</i> :
(3) This firm was established on ___ / ___ / ___	(4) I/We have owned this firm since: ___ / ___ / ___	
(5) Method of acquisition <i>(check all that apply)</i> :		
<input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other <i>(explain)</i>		
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

(7) Type of firm (check all that apply):

- Sole Proprietorship
- Partnership
- Corporation
- Limited Liability Partnership
- Limited Liability Corporation
- Joint Venture
- Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?
 Yes No
 If Yes, explain: _____

(9) Number of employees: Full-time _____ Part-time _____ Total _____

(10) Specify the gross receipts of the firm for the last 3 years: Year _____ Total receipts \$ _____
 Year _____ Total receipts \$ _____
 Year _____ Total receipts \$ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?
 Yes No

If Yes, identify: Other Firm's name: _____
 Explain nature of shared facilities: _____

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes	<input type="checkbox"/> No
	(d) had any subsidiaries?	<input type="checkbox"/> Yes	<input type="checkbox"/> No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? Yes No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):

	<u>Name</u>	<u>Address</u>	<u>Type of Business</u>
1.			
2.			
3.			

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? Yes No

If Yes, then list (attach extra sheets, if needed):

	<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>
1.					
2.					

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below *(If more than one owner, attach separate sheets for each additional owner):*

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address <i>(street and number)</i> :		City: State: Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership <i>(Check all that apply)</i> :	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other <i>(specify)</i> _____	
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No		

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	<u>Type</u>	<u>Dollar Value</u>
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock: <u>Number</u> <u>Percentage</u> <u>Class</u> <u>Date acquired</u> <u>Method Acquired</u>			
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____			
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm <i>(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)</i> ? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of Business: _____ Function/Title: _____ Nature of Business Relationship: _____			

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? <i>(Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying)</i>
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain <i>(attach additional sheets if needed)</i> :

Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? Yes No

If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? Yes No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? Yes No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?
 Yes No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? Yes No

If Yes, explain:

E. Financial Information

(1) Banking Information:
 (a) Name of bank: _____ (b) Phone No: () _____
 (c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) **Bonding Information:** If you have bonding capacity, identify: (a) Binder No: _____
 (b) Name of agent/broker _____ (c) Phone No: () _____
 (d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____
 (e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc.) (attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female Black American Hispanic American
Native American Asian- Pacific American
Subcontinent Asian American
Other (specify) _____

I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST
In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- Personal Financial Statement (form available with this application)
- Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- Your firm's tax returns (gross receipts) and all related schedules for the past three years
- Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- Your firm's signed loan agreements, security agreements, and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment leased and signed lease agreements
- List of construction equipment and/or vehicles owned and titles/proof of ownership
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- Year-end balance sheets and income statements for the past three years (or life of firm, if less than three years); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits, and haul authority forms
- DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- Bank authorization and signatory cards
- Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- Official Articles of Incorporation (signed by the state official)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement
- Minutes of all stockholders and board of directors meetings
- Corporate by-laws and any amendments
- Corporate bank resolution and bank signature cards
- Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

Section Stocks & Bonds 2* Stocks & Bonds

Number of Shares	Name of Securities	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value
TOTAL					

Section 3* Real Estate Owned (List each parcel separately)

	Property A	Property B	Property C
Type of Property			
Address			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Account Number			
Mortgage Balance			
Payment Amount (annual)			
Mortgage Status			

Section 4* Other Personal Property and Other Assets: Describe if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment, and if delinquent, describe delinquency, household items, art & other collectibles, and personal effects

Section 5* Unpaid Taxes: Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.

Section 6* Other Liabilities: Describe in detail.

Section 7* Life Insurance Held: Give face amount and cash surrender value of policies - name of insurance company and beneficiaries.

I hereby authorize DDOT to make inquiries, as necessary, to verify the truth and accuracy of the information contained herein. Further, I declare, under penalty of perjury under the laws of the United States, that the foregoing information and information contained in attachments hereto, is true and accurate as of the stated date. These statements are made for the purpose of obtaining DDOT DBE Certification and possible participation on federally-assisted contracts. I understand false statements may result in my inability to obtain or continue DDOT DBE Certification and may result in criminal prosecution.

Print Name:	Social Security Number:
Signature:	Date:

Notary Public (print name): _____

Notary Public (signature): _____

(Notary Seal)

Sworn to before me this _____ day of _____, _____

ATTACHMENT 14
REMOVAL OF A DBE'S ELIGIBILITY

REMOVAL OF A DBE'S ELIGIBILITY

Section 26.87

(a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in § 26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.* (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its

eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under § 26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

ATTACHMENT 15

49 CFR PART 26

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR Data is current as of August 13, 2013

Title 49: Transportation

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Contents**Subpart A—General**

- § 26.1 What are the objectives of this part?
- § 26.3 To whom does this part apply?
- § 26.5 What do the terms used in this part mean?
- § 26.7 What discriminatory actions are forbidden?
- § 26.9 How does the Department issue guidance and interpretations under this part?
- § 26.11 What records do recipients keep and report?
- § 26.13 What assurances must recipients and contractors make?
- § 26.15 How can recipients apply for exemptions or waivers?

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

- § 26.21 Who must have a DBE program?
- § 26.23 What is the requirement for a policy statement?
- § 26.25 What is the requirement for a liaison officer?
- § 26.27 What efforts must recipients make concerning DBE financial institutions?
- § 26.29 What prompt payment mechanisms must recipients have?
- § 26.31 What information must you include in your DBE directory?
- § 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?
- § 26.35 What role do business development and mentor-protégé programs have in the DBE program?
- § 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?
- § 26.39 Fostering small business participation.

Subpart C—Goals, Good Faith Efforts, and Counting

- § 26.41 What is the role of the statutory 10 percent goal in this program?
- § 26.43 Can recipients use set-asides or quotas as part of this program?
- § 26.45 How do recipients set overall goals?
- § 26.47 Can recipients be penalized for failing to meet overall goals?
- § 26.49 How are overall goals established for transit vehicle manufacturers?
- § 26.51 What means do recipients use to meet overall goals?
- § 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?
- § 26.55 How is DBE participation counted toward goals?

Subpart D—Certification Standards

- § 26.61 How are burdens of proof allocated in the certification process?
- § 26.63 What rules govern group membership determinations?

- § 26.65 What rules govern business size determinations?
- § 26.67 What rules determine social and economic disadvantage?
- § 26.69 What rules govern determinations of ownership?
- § 26.71 What rules govern determinations concerning control?
- § 26.73 What are other rules affecting certification?

Subpart E—Certification Procedures

- § 26.81 What are the requirements for Unified Certification Programs?
- § 26.83 What procedures do recipients follow in making certification decisions?
- § 26.85 Interstate certification.
- § 26.86 What rules govern recipients' denials of initial requests for certification?
- § 26.87 What procedures does a recipient use to remove a DBE's eligibility?
- § 26.89 What is the process for certification appeals to the Department of Transportation?
- § 26.91 What actions do recipients take following DOT certification appeal decisions?

Subpart F—Compliance and Enforcement

- § 26.101 What compliance procedures apply to recipients?
- § 26.103 What enforcement actions apply in FHWA and FTA programs?
- § 26.105 What enforcement actions apply in FAA programs?
- § 26.107 What enforcement actions apply to firms participating in the DBE program?
- § 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

Appendix C to Part 26—DBE Business Development Program Guidelines

Appendix D to Part 26—Mentor-Protégé Program Guidelines

Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

Appendix F to Part 26—Uniform Certification Application Form

AUTHORITY: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.* ; 49 U.S.C. 47107, 47113, 47123; Sec. 1101 (b), Pub. L. 105-178, 112 Stat. 107, 113.

SOURCE: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

Subpart A—General

§ 26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§ 26.3 To whom does this part apply?

(a) If you are a recipient of any of the following types of funds, this part applies to you:

(1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

(2) 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, III, and V of the TEA-21, Pub. L. 105-178.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

§ 26.5 What do the terms used in this part mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Compliance means that a recipient has correctly implemented the requirements of this part.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.

Department or DOT means the U.S. 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).

Disadvantaged business enterprise or DBE means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent 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.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

DOT/SBA Memorandum of Understanding or MOU, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section.

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary industry classification means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the *North American Industry Classification Manual—United States, 1997* which is available from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161; by calling 1 (800) 553-6847; or via the Internet at: <http://www.ntis.gov/product/naics.htm>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, *race-neutral* includes gender-neutrality.

Recipient is 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.

Secretary means the Secretary of Transportation or his/her designee.

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

Small Business Administration or *SBA* means the United States Small Business Administration.

SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) BD or SDB programs.

Small business concern means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in § 26.65(b).

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "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;

(iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

(iv) "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;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Tribally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003; 76 FR 5096, Jan. 28, 2011]

§ 26.7 What discriminatory actions are forbidden?

(a) You must 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 this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must 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 program with respect to individuals of a particular race, color, sex, or national origin.

§ 26.9 How does the Department issue guidance and interpretations under this part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

[72 FR 15617, Apr. 2, 2007]

§ 26.11 What records do recipients keep and report?

(a) You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.

(b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.

(c) You must create and maintain a bidders list.

(1) The purpose of this list is to provide you as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts for use in helping you set your overall goals.

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each 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 firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (*e.g.*, collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 76 FR 5096, Jan. 28, 2011]

§ 26.13 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient 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 the recipient 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.*).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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.

§ 26.15 How can recipients apply for exemptions or waivers?

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The

Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in § 26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

§ 26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000]

§ 26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

§ 26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

§ 26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§ 26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

§ 26.31 What information must you include in your DBE directory?

(a) In the directory required under § 26.81(g) of this Part, you must list all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE.

(b) You must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. You must make any changes to your current directory entries necessary to meet the requirement of this paragraph (a) by August 26, 2011.

[76 FR 5096, Jan. 28, 2011]

§ 26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with § 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

§ 26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a “mentor-protégé” program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011]

§ 26.39 Fostering small business participation.

(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their

participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (*e.g.*, \$1 million).

(2) In multi-year design-build contracts or other large contracts (*e.g.*, for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

[76 FR 5097, Jan. 28, 2011]

Subpart C—Goals, Good Faith Efforts, and Counting

§ 26.41 What is the role of the statutory 10 percent goal in this program?

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 26.43 Can recipients use set-asides or quotas as part of this program?

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

§ 26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However,

if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in § 26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming three fiscal years.

(2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f)(1)(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.

(ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.

(iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.

(iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.

(v) You may make, for informational purposes, projections of your expected DBE achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.

(2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (*see* 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(6) Timely submission and operating administration approval of your overall goal is a condition of eligibility for DOT financial assistance.

(7) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive DOT financial assistance.

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003; 75 FR 5536, Feb. 3, 2010; 76 FR 5097, Jan. 28, 2011]

§ 26.47 Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

(c) If the awards and commitments shown on your Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in § 26.103 or § 26.105 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;

(ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.

(d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

§ 26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

(d) As a recipient, you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39 of this part.

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) 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 recipient 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);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order meet your overall goal.

Example to paragraph (f)(1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (*i.e.* , not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (*i.e.* , from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to

meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
 - (i) The names and addresses of DBE firms that will participate in the contract;
 - (ii) A description of the work that each DBE will perform;
 - (iii) The dollar amount of the participation of each DBE firm participating;
 - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
 - (v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
 - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and
- (3) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—
 - (i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or
 - (ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.
- (c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.
- (d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.
 - (1) As part of this reconsideration, the bidder/offeror must 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.
 - (2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.
 - (3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
 - (4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
 - (5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.
- (e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a

recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(3) 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;

(x) 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.

(4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.

(5) The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), you may provide a response period shorter than five days.

(6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

(g) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor 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 you established for the procurement.

(h) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

(i) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

§ 26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in § 26.87(i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart D—Certification Standards

§ 26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in § 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in § 26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (see § 26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see § 26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate § 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009]

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed \$1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under section 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of § 26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) [Reserved]

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of Appendix E of this part.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35554, June 16, 2003; 76 FR 5099, Jan. 28, 2011]

§ 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the

normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

(1) The owner's expertise must be—

- (i) In a specialized field;
- (ii) Of outstanding quality;
- (iii) In areas critical to the firm's operations;
- (iv) Indispensable to the firm's potential success;
- (v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§ 26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions

precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in § 26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the

remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(1) The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. If your Directory does not list types of work for any firm

in a manner consistent with this paragraph (a)(1), you must update the Directory entry for that firm to meet the requirements of this paragraph (a)(1) by August 28, 2011.

(2) Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

(3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

(4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5099, Jan. 28, 2011]

§ 26.73 What are other rules affecting certification?

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b)(1) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

(2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of § 26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size

standards of § 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in § 26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (*see* Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (*e.g.*, information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5099, Jan. 28, 2011]

Subpart E—Certification Procedures

§ 26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by § 26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5100, Jan. 28, 2011]

§ 26.83 What procedures do recipients follow in making certification decisions?

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including contracts it has received and work it has completed;

(5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

(6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.

(i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.

(ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(iii) You must review all information on the form prior to making a decision about the eligibility of the firm.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) [Reserved]

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of section 26.87. You may not require DBEs to reapply for certification or require "recertification" of currently certified firms. However, you may

conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section), a complaint, or other information concerning the firm's eligibility. If you have grounds to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and jobsites.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under § 26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under § 26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under § 26.89.

(l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

(m) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under § 26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. You may also apply the waiting period provided under § 26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5100, Jan. 28, 2011]

§ 26.85 Interstate certification.

(a) This section applies with respect to any firm that is currently certified in its home state.

(b) When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.

(1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.

(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.

(c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.

(1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification. This includes affidavits of no change (see § 26.83(j)) and any notices of changes (see § 26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any other recipient concerning your application or status as a DBE firm.

(2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.

(3) If you have filed a certification appeal with DOT (see § 26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.

(4) You must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

(i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85 (c) and the information is complete and, in the case of the information required by § 26.85(c)(1), is an identical copy of the information submitted to State A.

(ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Within seven days contact State A and request a copy of the site visit review report for the firm (see § 26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by "State A" or any other State of not complying with such requests in a timely manner is noncompliance with this Part.

(2) Determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:

(i) Evidence that State A's certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

(iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;

(iv) The State law of State B requires a result different from that of the State law of State A.

(v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.

(3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.

(4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.

(i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.

(ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.

(iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.

(iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.

(v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.

(vi) The firm's application for certification is stayed pending the outcome of this process.

(vii) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under s§ 26.89 of this part.

(e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.

(f)(1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:

(i) The name of the firm;

(ii) The name(s) of the firm's owner(s);

(iii) The type and date of the action;

(iv) The reason for the action.

(2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.

(3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

(g) You must implement the requirements of this section beginning January 1, 2012.

[76 FR 5100, Jan. 28, 2011]

§ 26.86 What rules govern recipients' denials of initial requests for certification?

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003]

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

(a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in § 26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is

reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.* (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under § 26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) *Separation of functions.* You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (*i.e.* , an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

(4) A change in the certification standards or requirements of the Department since you certified the firm; or

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under § 26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) [Reserved]

(i) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) *Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in § 26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: Department of Transportation, Office of Civil Rights, 1200 New Jersey Avenue, SE., Washington, DC 20590.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under § 26.109(c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be deemed a failure to cooperate under § 26.109(c).

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003; 73 FR 33329, June 12, 2008]

§ 26.91 What actions do recipients take following DOT certification appeal decisions?

(a) If you are the recipient from whose action an appeal under § 26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under § 26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in § 26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in § 26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may

commence a proceeding to remove the firm's eligibility under § 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

Subpart F—Compliance and Enforcement

§ 26.101 What compliance procedures apply to recipients?

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

§ 26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in § 26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.

(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

§ 26.105 What enforcement actions apply in FAA programs?

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

§ 26.107 What enforcement actions apply to firms participating in the DBE program?

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5101, Jan. 28, 2011]

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE

certification and supporting information. However, you must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it

intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

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 must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder 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 goals 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. (1) Negotiating in good faith with interested DBEs. It is the bidder'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.

(2) A bidder 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 failure to meet the contract DBE 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 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.

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 vs. 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 recipient or 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.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS	
1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.	8(G). From the total dollar amount awarded in item 8(C), provide the <u>dollar amount</u> awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include.
2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.	8(H). From the total number of prime contracts awarded in 8(D), specify the <u>number</u> awarded to DBEs through Race Neutral methods.
3. Specify the Federal fiscal year (i.e., October 1 - September 30) in which the covered reporting period falls.	8(I). Of all prime contracts awarded this reporting period, calculate the <u>percentage</u> going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.
4. State the date of submission of this report.	9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 - March 31. If this report is due December 1, data should cover April 1 - September 30. If this report is due to the FAA, data should cover the entire year.	10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C) (D) and 9(C)-9(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(I) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(I) should equal the sum of 9(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.
6. Name of the recipient.	12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.
7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.	12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.
8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.	12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.
8(A). Provide the <u>total dollar amount</u> for all prime contracts assisted with DOT funds that were awarded during this reporting period.	12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.
8(B). Provide the <u>total number</u> of all prime contracts assisted with DOT funds that were awarded during this reporting period.	12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.
8(C). From the total dollar amount awarded in item 8(A), provide the <u>dollar amount</u> awarded to certified DBEs during this reporting period.	13(A)-13(F). Items 13(A)-13(F) are derived in the same manner as items 12(A)-12(F), except these figures should be based on Race Neutral prime contracts (i.e. those with no race conscious measures).
8(D). From the total number of prime contracts awarded in item 8(B), specify the <u>number</u> awarded to certified DBEs during this reporting period.	14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
8(E). From the total dollar amount awarded in 8(C), provide the <u>dollar amount</u> awarded to DBEs through the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.	15. Name of the Authorized Representative preparing this form.
8(F). From the total number of prime contracts awarded in 8(D), specify the <u>number</u> awarded to DBEs through Race Conscious methods.	16. Signature of the Authorized Representative.
	17. Phone number of the Authorized Representative.
	18. Fax number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.

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UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS
 Please refer to the instructions sheet for directions on filling out this form.

1. Submit to: Check both. FHWA FTA/Volker Award

2. AIF Number (FAA Recipients Only)

3. Report due date: Report due date (for period Oct. 1, 1999 - 9/30)

4. Date this report submitted

5. Reporting period: Report due date (for period Oct. 1, 1999 - 9/30)

6. Name of Recipient

7. Annual DBE Goals: Race National Goal % Overall Goal %

AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (Total contracts and subcontracts awarded or committed during this reporting period)	Race Conscious Goal			Race National Goal			Overall Goal		
	A	B	C	D	E	F	G	H	I
Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (Number)	Total to DBEs/Minority Conscious (dollars)	Total to DBEs/Minority Conscious (Number)	Total to DBEs/Minority Conscious (dollars)	Total to DBEs/Minority Conscious (Number)	Total to DBEs/Minority Conscious (dollars)	Total to DBEs/Minority Conscious (Number)
8. Prime contracts awarded (in period)									
9. Subcontracts awarded/committed (in period)									
TOTAL									
DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD-BREAKDOWN BY ETHNICITY & GENDER									
10. Total Number of Contracts (Prime and S-B)									
11. Total Dollar Value									
ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD									
12. Race Conscious									
13. Race Neutral									
14. Totals									
15. Signature of Authorized Representative	16. Signature of Authorized Representative								
17. Agency Number	18. File Number								

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[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

Appendix C to Part 26—DBE Business Development Program Guidelines

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and

goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D) (1) of this appendix;

(4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

(1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;

(2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;

(3) The types of contract opportunities being sought, based on the firm's primary line of business; and

(4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

- (1) Profitability;
- (2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
- (3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
- (4) Ability to obtain bonding;

(5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and

- (6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

Appendix D to Part 26—Mentor-Protégé Program Guidelines

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect

cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

SOCIAL DISADVANTAGE

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

ECONOMIC DISADVANTAGE

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this

appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

Appendix F to Part 26—Uniform Certification Application Form

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM UNIFORM CERTIFICATION APPLICATION

NOTE: If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices — not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.

- (4) State the date on which you and/or each other owner took ownership of the firm.

- (5) Check the appropriate box that describes the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

- (6) Check the appropriate box that indicates whether your firm is "for profit."

NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.

- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.

- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.

- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.

- (2) Check the appropriate box that indicates whether at present, or at any time in the past:

- (a) Your firm has been a subsidiary of any other firm;
- (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
- (c) Your firm has owned any percentage of any other firm, and
- (d) Your firm has had any subsidiaries of its own.

- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

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- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.

- (7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your firm's Officers and Board of Directors:

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer of your firm.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

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- (3) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
- (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
- (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf.
- (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
- (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
- (6) Office management;
- (7) Marketing and sales;
- (8) Purchasing of major equipment;
- (9) Signing company checks (for any purpose); and
- (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
- (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which she is involved, and his/her function performed in that other business.
- (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
- (2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
- (3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
- (4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- D. Does your firm rely on any other firm for management functions or employee payroll?**
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.
- E. Financial Information**
- (1) **Banking Information**
- (a) State the name of your firm's bank.
- (b) State the main phone number of your firm's bank branch.
- (c) State the address of your firm's bank branch.
- (2) **Bonding Information**
- (a) State your firm's Binder Number.
- (b) State the name of your firm's bond agent and/or broker.
- (c) State your agent's/broker's phone number.
- (d) State your agent's/broker's address.
- (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.
- F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.
- G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**
Indicate in the spaces provided the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.
- H. List current licenses/permits held by any owner or employee of your firm:**
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.
- I. List the three largest contracts completed by your firm in the past three years, if any:**
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.
- J. List the three largest active jobs on which your firm is currently working:**
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.
- AFFIDAVIT & SIGNATURE**
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

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DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

① **Should I apply?**

- Is your firm at least 51% owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② **Is there an easier way to apply?**

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.

NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.

③ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

④ **Where can I find more information?**

- U.S. DOT - <http://esdbweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA - <http://www.sba.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/index/tables/size.html> (provides a listing of NAICS codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Page 1 of 8

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Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>If Yes, check appropriate box(es)</i>	<input type="checkbox"/> DBE	Name of certifying agency:
	Has your firm's state UCP conducted an on-site visit?	
	<input type="checkbox"/> Yes, on / / State: <input type="checkbox"/> No	
<input type="checkbox"/> 8(a)	⊗ STOP! If you checked either the 8(a) or SDH box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.	
<input type="checkbox"/> SDH		

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?

Yes, on / / No

If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:		
(3) Phone #:	(4) Other Phone #:	(5) Fax #:		
(6) E-mail:		(7) Website <i>if have one</i> :		
(8) Street address of firm <i>(No P.O. Box)</i> :		City:	County/Parish:	State: Zip:
(9) Mailing address of firm <i>(if different)</i> :		City:	County/Parish:	State: Zip:

B. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID <i>if any</i> :
(3) This firm was established on / /		(4) I/We have owned this firm since: / /
(5) Method of acquisition <i>(check all that apply)</i> :		
<input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other <i>(explain)</i>		
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.

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(7) Type of firm (check all that apply):

- Sole Proprietorship
- Partnership
- Corporation
- Limited Liability Partnership
- Limited Liability Corporation
- Joint Venture
- Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?
 Yes No
 If Yes, explain: _____

	Part-time	Total
(9) Number of employees: Full-time		
(10) Specify the gross receipts of the firm for the last 3 years: Year _____		Total receipts \$ _____
Year _____		Total receipts \$ _____
Year _____		Total receipts \$ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?
 Yes No

If Yes, identify Other Firm's name: _____
 Explain nature of shared facilities: _____

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? Yes No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each *attach extra sheets, if needed*:

Name	Address	Type of Business
1. _____	_____	_____
2. _____	_____	_____
3. _____	_____	_____

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? Yes No

If Yes, then list (attach extra sheets, if needed):

Name	Relationship	Company	Type of Business	Own or Manage?
1. _____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____

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Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below. *(If more than one owner, attach separate sheets for each additional owner.)*

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (street and number):	City:	State: Zip
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership <i>(Check all that apply):</i>	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black	<input type="checkbox"/> Hispanic <input type="checkbox"/> Native American
(8) Lawfully Admitted Permanent Resident:	<input type="checkbox"/> Asian Pacific	<input type="checkbox"/> Subcontinent Asian
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other (specify): _____	

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock:			
Number	Percentage	Class	Date acquired Method Acquired
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business:		Function Title:	
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personal sharing, etc.)? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business:		Function Title:	
Nature of Business Relationship:			

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? <i>(Use and attach the Personal Net Worth calculation form at the end of this application, attach additional sheets if more than one owner is applying)</i>
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain <i>(attach additional sheets if needed):</i>

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Section 4: CONTROL

A. Identify your firm's Officers & Board of Directors *(If additional space is required, attach a separate sheet):*

		Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)					
	(b)					
	(c)					
	(d)					
	(e)					
(2) Board of Directors	(a)					
	(b)					
	(c)					
	(d)					
	(e)					

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? Yes No

If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? Yes No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas *(If more than two persons, attach a separate sheet):*

		Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.				
	b.				
(2) Estimating and bidding	a.				
	b.				
(3) Negotiating and Contract Execution	a.				
	b.				
(4) Hiring/firing of management personnel	a.				
	b.				
(5) Field/Production Operations Supervisor	a.				
	b.				
(6) Office management	a.				
	b.				
(7) Marketing/Sales	a.				
	b.				
(8) Purchasing of major equipment	a.				
	b.				
(9) Authorized to Sign Company Checks (for any purpose)	a.				
	b.				
(10) Authorized to make Financial Transactions	a.				
	b.				

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(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? Yes No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?
 Yes No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

C. Indicate your firm's inventory in the following categories (attach additional sheets if needed):

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

D. Does your firm rely on any other firm for management functions or employee payroll? Yes No

If Yes, explain:

E. Financial Information

(1) Banking Information:
 (a) Name of bank: _____ (b) Phone No: () _____
 (c) Address of bank: _____ City: _____ State: _____ Zip: _____

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(2) **Bonding Information:** If you have bonding capacity, identify: (a) Binder No: _____
 (b) Name of agent/broker: _____ (c) Phone No: () _____
 (d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____
 (e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing the Loan	Original Amount	Current Balance	Purpose of Loan
1.					
2.					
3.					

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years (attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.					
2.					
3.					

H. List current licenses/permits held by any owner and/or employee of your firm (e.g., contractor, engineer, architect, etc. Attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	License Number and State
1.			
2.			
3.			

I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.			
2.			
3.			

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J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.					
2.					
3.					

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DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST
 In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- Personal Financial Statement (form available with this application)
- Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- Your firm's tax returns (gross receipts) and all related schedules for the past three years
- Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- Your firm's signed loan agreements, security agreements, and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment leased and signed lease agreements
- List of construction equipment and/or vehicles owned and titles/proof of ownership
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- Year-end balance sheets and income statements for the past three years (or life of firm, if less than three years); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits, and haul authority forms
- DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- Bank authorization and signatory cards
- Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- Trust agreements held by any owner claiming disadvantaged status, if any

Partnership or Joint Venture

- Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- Official Articles of Incorporation (signed by the state official)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement
- Minutes of all stockholders and board of directors meetings
- Corporate by-laws and any amendments
- Corporate bank resolution and bank signature cards
- Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

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AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed), swear or affirm under penalty of law that I am _____ (title) of applicant firm _____ (firm name) and that I have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application, and I authorize such agency to contact any entity named in the application, and the named firm's bonding companies, banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility.

I agree to submit to government audit, examination and review of books, records, documents and files, in whatever form they exist, of the named firm and its affiliates, inspection of its place(s) of business and equipment, and to permit interviews of its principals, agents, and employees. I understand that refusal to permit such inquiries shall be grounds for denial of certification.

If awarded a contract or subcontract, I agree to promptly and directly provide the prime contractor, if any, and the Department, recipient agency, or federal funding agency on an ongoing basis, current, complete and accurate information regarding (1) work performed on the project; (2) payments; and (3) proposed changes, if any, to the foregoing arrangements.

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment, and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

I certify that I am a socially and economically disadvantaged individual who is an owner of the above-referenced firm seeking certification as a Disadvantaged Business Enterprise (DBE). In support of my application, I certify that I am a member of one or more of the following groups, and that I have held myself out as a member of the group(s) (circle all that apply):

Female Black American Hispanic American
Native American Asian-Pacific American
Subcontinent Asian American
Other (specify) _____

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I certify that I am socially disadvantaged because I have been subjected to racial or ethnic prejudice or cultural bias, or have suffered the effects of discrimination, because of my identity as a member of one or more of the groups identified above, without regard to my individual qualities.

I further certify that my personal net worth does not exceed \$750,000, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare under penalty of perjury that the information provided in this application and supporting documents is true and correct.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

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[68 FR 35559, June 16, 2003]

For questions or comments regarding e-CFR editorial content, features, or design, email ecfr@nara.gov.
For questions concerning e-CFR programming and delivery issues, email webteam@gpo.gov.