



District Department of Transportation

# Disadvantage Business Enterprise Program Plan

Federal Highway Administration  
and  
Federal Transit Administration  
Revised December 2015



**GOVERNMENT OF THE DISTRICT OF COLUMBIA**  
DEPARTMENT OF TRANSPORTATION



**DISADVANTAGED BUSINESS ENTERPRISE  
PROGRAM PLAN**

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Prepared by:

**Office of Civil Rights  
District Department of Transportation**

55 M Street, S.E., 3<sup>rd</sup> Floor  
Washington, DC 20003

Submitted to:

**Federal Highway Administration**

District of Columbia Division Office  
1990 K Street NW, Suite 510  
Washington, DC 20006

**REVISED DECEMBER 2015**

# **BUSINESS ENTERPRISE PROGRAM PLAN**

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# Government of the District of Columbia

## Department of Transportation



Office of Civil Rights

### Policy Statement

#### Section 26.1, 26.23 Objectives/Policy Statements

The District Department of Transportation (DDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The District Department of Transportation (DDOT) has received federal financial assistance from the U.S. Department of Transportation, and as a condition of receiving this assistance, DDOT has signed an assurance that it will comply with 49 CFR Part 26.

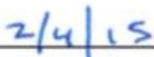
It is the policy of the District Department of Transportation (DDOT) to ensure that DBEs, as defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

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

Lisa Gregory, Esq., Chief, Office of Civil Rights has been delegated as the DBE Liaison Officer. In that capacity, the Chief Office of Civil Rights is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the District Department of Transportation (DDOT) in its financial assistance agreements with the U.S. Department of Transportation.

The District Department of Transportation (DDOT) has disseminated this policy statement to the DDOT's Executive Team and all of the components of our organization. We have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts on DDOT's website and on the agency bidders' document.

  
\_\_\_\_\_  
Leif A. Dormsjo  
Acting Director, District Department of Transportation

  
\_\_\_\_\_  
Date

## **SUBPART A - General Requirements**

### **Section 26.1 Objectives**

The District Department of Transportation (DDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. DDOT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, DDOT has signed an assurance that it will comply with 49 CFR Part 26.

The objectives of the DBE program are:

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

### **Section 26.3 Applicability**

#### **§26.3 To whom does this part apply?**

DDOT is the recipient of federal-aid highway funds authorized under 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. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.

DDOT is the recipient of Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.

### **Section 26.5 Definitions**

The following definitions apply to this program:

*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:
  - a. One concern controls or has the power to control the other; or
  - b. A third party or parties controls or has the power to control both; or
  - c. 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.*).

*Assets* mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

*Business, business concern or business enterprise* means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

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

*Contingent Liability* means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

*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.

*Days* mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday.

Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

*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.

*Federal-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.

*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, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State 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.

*Liabilities* mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

*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 most current North American Industry 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, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

*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. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

*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 has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

1. Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
2. Any individual in the following groups, members of which are reputably 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 enrolled members of a federally or State recognized Indian tribe, Alaska Natives, 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), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, 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; and
  - 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.
3. Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

*Spouse* means a married person, including a person in a domestic partnership or a civil union recognized under State law.

*Transit vehicle manufacturer* means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people

with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

*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).

## **Section 26.7 Non-discrimination Requirements**

The District Department of Transportation (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 parts 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 26.9 Guidance and Interpretations**

(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:

## **Section 26.11 Record Keeping Requirements**

### **Reporting to DOT: 26.11(b)**

We will report DBE participation to DOT as follows:

FTA Recipients- The District Department of Transportation (DDOT) - We 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. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

FHWA Recipients-DDOT will report DBE participation semi-annually (1<sup>st</sup> Reporting period: Oct. 1- Mar. 31, 2<sup>nd</sup> Reporting period: April 1-Sept. 30) to the FHWA Division office using the *Uniform Report of DBE Awards or Commitments and Payments*. The Uniform Reports will be submitted to the FHWA

Division office no later than May 1<sup>st</sup> for the first reporting period and no later than Nov. 1<sup>st</sup> for the second reporting period.

### **Bidders List: 26.11(c)**

DDOT's bidder's list includes information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The bidder's list is used to calculate the overall goal. The bidder's list includes the following information about DBEs and non-DBEs: the Firm's name, the Firm's address, the Firm's status as a DBE or non-DBE, the age of the firm, and the annual gross receipts of the firm (DDOT obtains 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.).

The following process is used to create DDOT's Bidder's List:

1. The Bidder's List is developed and maintained by DDOT's Office of Contracting and Procurement (OCP);
2. OCP maintains a list in its office of the attendees of specific pre-proposal conferences regarding DDOT's federal aid projects;
3. There are two ways in which interested parties may obtain the list of attendees from the pre-proposal conference:
  - a. One may contact the OCP Bid Room at (202) 671-2272 and request the list from OCP staff
  - b. Interested parties may also register on DDOT's online dashboard. [Dashboard.dc.gov](http://Dashboard.dc.gov)
4. 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. This information may also be available upon request by OCR to the prime contractor if needed to demonstrate good faith effort;
5. 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);
6. The Triennial Schedule of Selected Architect-Engineering Firms; and
7. The Associated Builders and Contractors (ABC) Metro Washington Chapter Directory.

DDOT screens 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.

### **Maintenance of Records 26.11 (d)**

DDOT maintains records documenting a firm's compliance with the requirements of this part. DDOT retains a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records are retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement. Other certification or compliance related records are retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.

### **Metropolitan Washington Unified Certification Program 26.11 (e)**

DDOT as a party to the Metropolitan Washington Unified Certification Program established pursuant to §26.81 of this part reports to the Department of Transportation's Office of Civil Rights, by January 1,

2015, and each year thereafter, the percentage and location of certified DBE firms in the UCP Directory controlled by the following:

1. Women;
2. Socially and economically disadvantaged individuals (other than women); and
3. Individuals who are women and are otherwise socially and economically disadvantaged individuals.

## **Section 26.13 Federal Financial Assistance Agreement**

DDOT has signed the following assurances, applicable to all DOT-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. 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 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.).

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

### **Contract Assurance: 26.13(b)**

DDOT ensures that the following clause is placed in every USDOT-assisted contract and subcontract, this includes each subcontract (regardless of tier) the prime contractor signs with a subcontractor:

“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. 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.”

To ensure compliance with this policy, the Prime Contractor is required to upload all signed agreements between the Prime and DBE firms as well as the non-DBE subcontracts on DDOT'S web based Contract Compliance System. The prime contractor has **10 business days** from the date of contract award to log into the system to review and update the required information to ensure its accuracy. Failure to cooperate with the Office of Civil Rights may result in breach of contract.

***“Failure to do so shall be grounds for appropriate action against the party involved (e.g.: findings of non-responsibility for future contracts and/or suspension and debarment).”***

Upon entry, the Senior Local and Federal Compliance Officer reviews the documents for compliance and notifies the prime contractor of the status of their compliance with this policy.

## **SUBPART B - Administrative Requirements**

### **Section 26.21 DBE Program Updates**

DDOT has received a grant from FTA: \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year.

For FHWA: The District Department of Transportation (DDOT) is required to have a DBE program as an FHWA recipient of federal-aid highway funds authorized by a statute to which this part applies. The District Department of Transportation (DDOT) will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to USDOT updates representing significant changes in the program.

### **Section 26.23 Policy Statement**

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

The Policy Statement is on DDOT website: <http://ddot.dc.gov/node/773662>.

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

#### **DDOT DBE POLICY STATEMENT MAILING LIST**

**1. A/E Council**

c/o Capital Engineers PC  
7826 Eastern Avenue NW  
Suite 411  
Washington, DC 20012  
**Attention: Endrea Frazier**  
Phone: 202-365-8686 (o)  
Email: [endrea.frazier@gmail.com](mailto:endrea.frazier@gmail.com)

**2. Transportation Development Foundation**

Metropolitan Washington American Road & Transportation Builders Association (MWRRTBA)  
1219 – 28<sup>th</sup> Street N.W.  
Washington, D.C. 20007  
**Attention: Michael Sakata, Executive Director**  
Phone: 202/289-4434  
E-mail: [msakata@artba.org](mailto:msakata@artba.org)

**3. Progressive Transportation Services Administration (PTSA)**

District Department of Transportation (DDOT)  
55 M Street S.E. 5<sup>th</sup> Floor  
Washington, D.C. 20003  
**Attention: Sean Egan, Deputy Associate Director for Transit Operations**  
Phone: 202/671-4617  
E-Mail: sean.egan@dc.gov

- 4. Business Opportunity Workforce Development Center**  
District Department of Transportation  
2235 Shannon Place S.E., Suite 3031  
Washington, D.C. 20020  
**Attention: Linda Fennell, Manager DBE Supportive Services**  
Phone: 202/645-8620  
E-mail: [linda.fennell@dc.gov](mailto:linda.fennell@dc.gov)

DDOT has disseminated this policy statement to the DDOT's Executive Team, email blast and all of the components of our organization. We have distributed this statement to e-blast to DBE firms, Prime contractors, and non-DBE business communities that perform work for us on DOT-assisted contracts on DDOT website and on the agency bidders' document.

## **Section 26.25 DBE Liaison Officer (DBELO)**

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

**Ms. Lisa Michelle Gregory, Chief,**  
Office of Civil Rights  
District Department of Transportation  
55 M Street, S.E., 3<sup>rd</sup> Floor  
Washington, DC 20003  
(202) 671-2628  
[Lisa.Gregory@dc.gov](mailto: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 four (4) 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; and
15. Maintain DDOT's updated directory on certified DBEs.

Other personnel responsible for DBE Program implementation:

- Mohammed Kabir, PHR/Senior Equal Opportunity Local and Federal Compliance Officer
- Linda Fennell, Manager, DBE Supportive Services
- Luisa Nguyen, Equal Opportunity /DBE Certification Specialist
- Leutisha Stills, Equal Opportunity/DBE Program Specialist/SBE Coordinator

## **Section 26.27 DBE Financial Institutions**

It is the policy of the District Department of Transportation (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.

### **MINORITY FINANCIAL INSTITUTIONS**

#### **1. Independence Federal Savings Bank**

1301 9<sup>th</sup> Street, N.W.  
Washington, D.C. 20001  
1-888-922-6537  
[www.ifs.com](http://www.ifs.com)

#### **2. Industrial Bank**

4812 Georgia Avenue, N.W.  
Washington, D.C. 20011  
(202) 722-2000  
[www.industrial-bank.com](http://www.industrial-bank.com)

#### **3. The Harbor Bank**

25 W. Fayette Street  
Baltimore, Maryland 21201  
(410) 528-1801  
[www.theharborbank.com](http://www.theharborbank.com)

Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

## **Section 26.29 Prompt Payment Mechanisms**

1. For each federal-aid contract, the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than no later than 7 days from the receipt from DDOT.

The prime contractor is required to submit the DDOT DBE Contractor Payment form monthly by the 15th of each month for the previous month payments. Completion and submittal of the form and the required copies (front & back) of cancelled check payments to DBEs is mandatory (Attachment 4).

2. DDOT-OCR has a contract compliance system to monitor all federal-aid DBE payments and participation. The compliance system will also assist in monitoring the DBE goal on each project.
3. Prime contractors may access the contract compliance system via the web at <https://ddot.dbesystem.com>

#### **DBE Contract Compliance System:**

All federal aid contracts are subject to monitoring by the online Contract Compliance System. The prime contractor and all subcontractors are required to provide any noted and/or requested contract compliance-related data electronically in the Contract Compliance System. The prime contractor and all subcontractors are responsible for responding by any noted response date or due date to any instructions or requests for information, and to inspect the Contract Compliance System on a regular basis to manage contact information and contract records. The prime contractor is responsible for ensuring that all subcontractors have completed all requested items and that their contact information is accurate and up-to-date. DDOT's Office of Civil Rights may require additional information related to the contract to be provided electronically through the system at any time before, during, or after contract award.

Information related to contractor access of the system will be provided to a designated point of contact with each contractor upon award of the contract. The Contract Compliance System is web-based and can be accessed at the following Internet address: <https://ddot.dbesystem.com>.

#### **The prime contractor must upload and report the following items:**

1. The prime contractor must report all payments to DBE firms and non-DBE subcontractors in the Contract Compliance System by the 15<sup>th</sup> of the month for the previous month's activity under this project. All payments must be reported in the Contract Compliance System monthly even if there is no activity for the month.
2. Upload all signed agreements between the Prime and DBE firms well as the non-DBE subcontracts into the Contract Compliance System.

***“Failure to do so shall be grounds for appropriate action against the party involved (e.g.: findings of non-responsibility for future contracts and/or suspension and debarment).”***

This online system allows Prime Contractors to actively support DDOT's efforts to achieve diversity participation, maintain accurate contact information, and report subcontractor payment details. The Prime Contractor is required to log in to review and update certain specific information regarding payments to the subcontractors, and all contact information (name, address, phone, fax, email) for the firm and the subcontractors. The Prime Contractor can also identify

who in the firm should be DDOTs main contact for each of their contracts. To begin, follow the steps below:

- a. Visit <https://ddot.dbesystem.com>. Follow the on-screen directions to **look up your account** and then access the secure system. Contact Customer Support via any of the system links if you have any questions while attempting to access your account.
- b. **Review and update all contact and contract information** as necessary for your firm and subcontractors.
- c. **Ask your subcontractors to log in** to review and confirm amount reported for each time period.

The contractor **MUST** log into the system to review and update the required information **within 10 business days**. The prime contractor is responsible for ensuring that all required information is entered, that it is accurate, and that the subcontractors verify payments received. Failure to cooperate with the Office of Civil Rights may result in breach of contract.

Each month from contract award until close out, the Prime Contractor is also required to log-in and report payment information. Payment information is reported by completing the pending Contract Audits which can be accessed from your Dashboard by clicking on “Contract Audits”. For each monthly audit, click on “Incomplete” in the Status column and report the amounts paid to each subcontractor during the month. You will also report the amount paid to you as the prime for the time period.

Repeat these steps for any additional incomplete audits on this or additional contracts that are assigned to you in the system.

**The prime contractor may also register for upcoming training sessions to learn more about system functionality, as well as classes that focus specifically on reporting payment to subcontractors.** To register, click on “Training Classes” under Help & Tools from any screen in the system and click RSVP next to the “Contract Compliance Reporting – Vendor Training.” You can also access the training classes without logging in here <https://ddot.dbesystem.com/events.asp> Additional information is available by clicking on the “Information for Vendors” link on the right-hand side of the home page under System Links.

There is no cost to Contractors for this service. The prime contractor may add as many users to their account as necessary to report and view contract compliance data (please do not share accounts between people). If technical assistance is required during this process, please use the online support form or email [DDOT@dbesystem.com](mailto:DDOT@dbesystem.com).

4. The Senior EO Local and Federal Compliance Officer or its designee will validate the payments made to DBE firms and subcontractors. DBE subcontractors will be required to validate payments received from the prime contractor in the contract compliance system.

***“Failure to do so shall be grounds for appropriate action against the party involved (e.g.: findings of non-responsibility for future contracts and/or suspension and debarment).”***

These records will be made available for inspection upon request by any authorized representative of DDOT-OCR or USDOT.

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

**Mohammed Kabir, PHR**

Senior Equal Opportunity 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](mailto:Mohammed.Kabir@dc.gov)

### **Retainage: 26.29(b)**

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 holds 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.

Article 9 (page26) of DDOTs Standard Specifications Highways and Structures 2013, states that the Contracting Officer at his/her discretion shall cause to be withheld retention in an amount sufficient to protect the interest of the District of Columbia. The amount shall **not exceed ten percent** of the partial payment. However, if the Contracting Officer, at any time finds that satisfactory progress is being made, he/she may authorize any of the remaining progress payments to be made in full or may retain from such remaining partial payments less than 10 percent thereof. As the work is found as substantially complete by the Chief Engineer, the Contracting Officer, if he considers the amount retained to be in excess of the amount adequate for the protection of the District, at his/her discretion, may release to the Contractor all or a portion of such excess amount.

For example: In accordance to DDOTs Standard Specifications Highways Structures 2013, section 105.13 states that when the [prime] Contractor completes a suitable unit or portion of the Project, the [DDOT] Engineer may make, or the Contractor may request, final inspection of that unit. If the [DDOT] Chief Engineer finds the unit complete and meets Contract requirements, he may accept in writing that unit as complete which written acceptance shall include a description of specific work accepted, and the Contractor may be relieved of further responsibility for the accepted unit. Such partial acceptance shall not void nor alter any Contract provision. Once the Prime Contractor is paid for this accepted work, the DBE firm may submit an invoice for their portion of the completed work for payment. The prompt payment requirement is enforced.

Upon final inspection, within thirty (30) consecutive Calendar Days after receipt of written notice from the [prime] Contractor that Contract work is complete and the Project area cleaned up, the [DDOT] Chief Engineer will make final inspection of the Project. The Contractor shall promptly correct any deficiency as determined, and upon acceptable completion of all Work and cleanup the Chief Engineer will certify in writing as to completion and the amount and value of each class of completed Work for purposes of final payment. All prior certificates or estimates upon which partial payments may have been made will be subject to correction in the final payment. The

DBE may submit an invoice for final payment to the Prime Contractor. The prompt payment requirement is enforced.

To obtain additional information, please contact the OCP:

**William Sharp, Chief Contracting Officer**

Office of Contracting and Procurement  
District Department of Transportation  
55 M Street, SE, 7th floor  
Washington, DC 20003  
[william.sharp2@dc.gov](mailto:william.sharp2@dc.gov)

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

The prime contractor shall include a contract clause in each sub-recipient's contract where it agrees to return retainage payments to each subcontractor no later than 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. 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).”***

We also require our sub-recipients to utilize a subcontractor payment form to monitor prompt payment compliance. (Attachment 5)

**Satisfactory Completing of Work: 26.29(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 DDOT. When DDOT 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. Therefore, this section of the regulation permits instances when the DBE subcontractor has completed their subcontract agreement in an acceptable manner, the DBE subcontractor is due full return of their retainage even though the prime contractor has not received its full retainage for the project.

Requests on behalf of the prime contractor for reduction in retainage at any point and time during contract performance will be considered in conjunction with the prime contractor's proposed payment to the DBE subcontractor and will be subject to compliance with this section.

To obtain additional information, please contact the OCP:

**William Sharp, Chief Procurement Officer**

Office of Contracting and Procurement  
District Department of Transportation  
55 M Street, SE, 7th floor  
Washington, DC 20003  
[William.Sharp2@dc.gov](mailto:William.Sharp2@dc.gov)

## **Dispute Resolution: 26.29(e) (1-3)**

DDOT require that prime contractors insert a contract provision in their subcontractor agreements that allows for a dispute resolution process. Pursuant to 49 CFR Part 26.29(e) (1-3), the following contract provisions will be reviewed and approved by the OCR:

1. A contract clause that requires prime contractors to include in their subcontractors' agreements language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes; and disputes between the prime contractor and DBE subcontractor may also be subject to DDOT's Alternative Dispute Resolution process. DDOT's OCR must be made aware of all and any disputes that arise to the level of requiring third party resolution. In some instances, the OCR will provide technical assistance to assist in settling the dispute.
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. As a component to the prompt payment requirement, DDOT has established additional mechanisms to ensure compliance with the prompt payment clause:

## **Monitoring Payments to DBEs**

1. It is the contractor's responsibility (both prime and subcontractors) to maintain records and documents for seven (7) years following the performance of the contract. These include:
  - a. Copy of all canceled checks
  - b. Invoices
  - c. DBE payment forms
  - d. Contract agreements
  - e. DBE utilization form

These records will be made available for inspection upon request by the Office of Civil Rights, any authorized representative of DDOT, or USDOT.

2. DDOT monitors the continuous summation of payments actually made to DBE firms and requires prime contractors and DBE subcontractors and suppliers to report monthly appropriate information for verification of such payments. Credit towards DBE contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs who were certified at the time of payment, and who have met the criteria for performing commercially useful function. This will be monitored by the DDOT Contract Compliance System, which can be accessed online at: <https://ddot.dbesystem.com>.
3. DDOT may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to verify that the actual amount paid to DBE subcontractors equals or exceeds the dollar amount stated in the report of proposed DBE participation.

## **Section 26.31 Directory**

DDOT maintains a DBE directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the

firm has been certified to perform as a DBE certificated with DDOT and the Washington Metropolitan Area Transit Authority. Our DBE Directory is updated daily. The directory can be accessed through DDOT's website below:

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

If a proposed partner from the Prime Contractors is not in the DDOT DBE Directory, please contact:

**Leutisha Stills, Equal Opportunity/DBE Program Specialist**

DDOT Office of Civil Rights

55 M Street, S.E., 3rd Floor

Washington, D.C. 20003

(202) 671-0479

[Leutisha.Stills@dc.gov](mailto:Leutisha.Stills@dc.gov)

**Catherine Svoboda, DBE & Compliance Specialist**

WMATA - DBE

600 Fifth Street, NW, 3C

Washington, DC 20001

202-962-1854

[csvoboda@wmata.com](mailto:csvoboda@wmata.com)

[http://www.wmata.com/business/disadvantaged\\_business\\_enterprise/dbe\\_search.cfm](http://www.wmata.com/business/disadvantaged_business_enterprise/dbe_search.cfm)

## **Section 26.33 Overconcentration**

The District Department of Transportation (DDOT) has not identified that overconcentration exists in the types of work that DBEs perform.

If DDOT determines that its certified DBE firms are 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 determination of overconcentration shall be made through assessments of contracting information in its federally financed DDOT administrations. Corrective measures are enumerated in 49 CFR, Part 26.33 and are available as are other appropriate measures tailored to specific circumstances at the time of the determination of overconcentration. Other provisions of 49 CFR, Part 26 which are not included in this summary continue to apply.

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.

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

### DDOT's Business Assistance Program (BAP) Goal:

DDOT's business development program is called the Business Assistance Program (BAP). Administered by the OCR's DBE/SS Program, the BAP assists firms in gaining the ability to compete successfully in the marketplace outside the DBE program (49 CFR 26.35 and Appendix C) by providing technical assistance in the areas of marketing, accounting, estimating and other capacity building services according to their needs assessments. The BAP consists of certified DBE firms that are in three categories; emerging (firms that have been established for less than three years or is new to DDOT's programs); intermediate (firms that have been established for 3 years or more and have experience contracting with a DDOT as a prime or a subcontractor to a prime); and advanced participants (firms who have experience contracting with DDOT for over three years and are ready to transition out of the program). Interested firms will have to agree to a (flexible) two-year commitment and meet with a designated DBE/SS Program representative at least once per month in order to receive subsidized financial and technical assistance.

DBE firms that are interested in participating in the BAP program may contact:

#### **Linda Fennell, MPP, CAAP**

DBE Supportive Services Manager  
Business Opportunity Workforce Development Center  
2235 Shannon Place, S.E., Suite 3031  
Washington, DC 20020  
(202)-645-8620  
[Linda.Fennell@dc.gov](mailto:Linda.Fennell@dc.gov)

To participate in the BAP, all interested DBEs must meet the following eligibility criteria:

1. Complete a needs assessment;
2. Maintained certification by DDOT/WMATA;
3. Are current with all tax obligations;
4. Complete and submit a business plan within six (6) months of entry into the Business Assistance Program;
5. Attend at least three (3) pre-bid conferences throughout the year;
6. Meet with our DBE/SS Program staff or its designee to develop a marketing plan, including an updated capability statement;
7. Have ready access to the Manual of Uniform Traffic Control Devices (MUTCD); Work Zone Temporary Control Manual; DDOT Standard Specifications for Highways and Structures and other pertinent DDOT. <http://ddot.dc.gov/page/standards-and-guidelines>; and
8. Attend at least three (3) workshops geared towards small businesses sponsored by the Agency of Local, Disadvantaged Small Businesses, SCORE, SBA, the Washington Network Small Business Development Center or other small business development entities.

### **Advanced Level BAP Participants**

In addition to the requirements above, BAP who are deemed "Advance level" BAP, a firm must meet the following requirements:

1. Demonstrate “good faith” effort to subcontract with a prime contractor within (flexible) two years;
2. Submit a minimum of two (2) bids per year;
3. Have been in consistent operation for at least three years;
4. Have the desire to expand into other scopes of work if necessary; and
5. Engage in contracting volume that is sustainable to transition out of the Business Assistance Program.

## **Needs Assessment**

Each DBE firm that requests to participate in the BAP must complete a needs assessment to determine which category of participation is appropriate. The needs assessment will be reviewed by DDOT’s DBE/SS Program Manager or their designated consultant. The results of the needs assessment will be used to develop an individual business plan that outlines the firm’s short-term and long-term business goals. The needs assessment will also evaluate each firm’s workforce capacity, training needs, current skills and barriers to compete for contract awards.

The DBE/SS Program Manager or their designated consultant will work with its financial consultants and other business partners to provide one-on-one counseling, deliver technical assistance, and receive referrals to SBA-approved lending institutions that support small businesses in order to further assist our participating DBE firms.

## **Business Plan Development**

In accordance with 49 CFR Part 26 Appendix C, Business Development Program Guidelines, each participant in the BAP irrespective of their level of participation, is required to have a comprehensive business plan. Within six (6) months of entry into the program, each participant should develop and submit to the DBE/SS Manager or its representative the business plan that outlines the short term and long range business goals of each BAP participant. Failure to do so may deem a DBE firm ineligible for participation in the BAP. During the BAP program year, there will be workshops scheduled either through DDOT or through a strategic partner that can offer business plan development assistance.

In accordance with the guidelines, 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 as directed by the business plan development requirements;
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 DDOT may require.

The DBE Business Development Program Guidelines directs each participant to annually review its currently approved business plan with DDOT’s DBE/SS Program Manager or their designee 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

DDOT approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

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. 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.

### **Financial Management Services**

The DBE/SS Program Manager or its designee will investigate and obtain additional strategic partners to provide assistance in the area of financial management. Several small business development entities such as The Washington Network of SBDCs, and SBA sponsor workshops on financial management tools, bonding workshops and other small business development courses throughout the year. The DBE/SS program will advertise those events on the website and through electronic communications.

### **Bond Financing**

The DBE/SS Program Manager or its designee will collaborate with our strategic partners to offer workshops on bond financing. The DBE/SS financial consultants will assist those DBEs that are bond eligible to review their financial statements prior to submission to a bond financing entity.

### **Technical Assistance Program**

The DBE/SS Program Manager or its designee will offer in collaboration with its partners, several training opportunities such as estimating assistance, limited accounting systems review or other relevant training on industry-related software. Other training programs will become available through the center's various partner organizations.

### **Marketing Services**

The DBE/SS Program Manager or its designee will offer marketing assistance in the way of the offering consulting services for the development of an industry-related capability statement and business portfolios for our smaller DBE firms. Based upon our informal interviews with our DBEs, smaller firms lack the professionally-developed marketing materials that are needed to be competitive. During informal discussions with our prime contractors, an industry-related capability statement is most desired from potential DBE partners.

### **Outreach and Public Education**

The DBE/SS Program engages an extensive outreach and education campaign targeting small, local minority and women owned businesses, business groups whose membership comprises of those

underrepresented groups and other entities that assist small businesses throughout the Metropolitan Washington region.

### **Measurement of Program Success**

DDOT will consider a participant as successfully completing the program by substantially achieving the targets, objectives and goals as set forth in its program term, and has demonstrated the ability to compete in the marketplace and its further participation within the program.

In determining whether a DBE participant has substantially achieved the goals and objectives of its business plan, the following factors, among others, DDOT will consider the following:

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.

### **Developmental Stage to Transitional Stage**

Pursuant to 49 CFR Part 26 Appendix C, program participation in the BAP 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.

DDOT DBE/SS Program has established the length of service in the BAP for two (2) years; however, DDOT retains the right to review the participant's progress towards profitability and meeting the firms established goals and objectives. The setting of such time is 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.

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 DDOT's DBE/SS Program manager or the designated representative at the same time other modifications are submitted pursuant to the annual review. The plan should set forth the same information as required under the business plan development guidelines, of steps the participant will take to continue its business development after the expiration of its program term.

### **Graduation from the Business Assistance Program**

Upon determination by DDOT that the participant is eligible for graduation from the developmental program, the DBE/SS Manager will 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.

### **Discontinuance from Participation in the Business Assistance Program**

DDOT retains the right for a participant to discontinue participation in the Business Assistance Program 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.

Furthermore, DDOT retains the right to 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. DDOT will take such action if over a 2-year period a DBE firm exhibits such a pattern.

For more information about the Business Assistance Program, please contact:

**Ms. Lisa Michelle Gregory, Chief,**  
District Department of Transportation  
55 M Street, SE, Third Floor  
Washington, DC 20003  
Telephone: 202-671-2628  
Email: [Lisa.Gregory@dc.gov](mailto:Lisa.Gregory@dc.gov)

**Linda Fennell, Manager**  
Office of Civil Rights  
DBE Supportive Services  
Business Opportunity and Workforce Development Center  
District Department of Transportation  
2235 Shannon Place, SE, Suite 3031  
Washington, DC 20020  
Telephone: 202-645-8620  
Email: [Linda.Fennell@dc.gov](mailto:Linda.Fennell@dc.gov)

## **Section 26.35(b)(1-3), The Mentor-Protégée Program**

### **Mentor-Protégé Overview**

During FY 2019, it is anticipated that DDOT will implement the Mentor-Protégé Program<sup>1</sup>. This program has been adapted and based upon the pilot Mentor-Protégé Program implemented by the U. S. Department of Transportation, Office of Small and Disadvantaged Business Utilization (USDOT/OSDBU). The program enhances the capability of disadvantaged and small business owners to compete for federally-funded procurement opportunities in DDOT. The program encourages private-sector relationships and expands DDOT's efforts to identify and respond to the developmental needs of small and disadvantaged businesses. The program will be administered by the DDOT's Office of Civil Rights.

Small business concerns include small disadvantaged businesses (SDB), 8(a) firms, women-owned small businesses (WOSB), HUB Zone small businesses, veteran-owned small businesses (VOSB) and service disabled veteran-owned small businesses (SDVOSB). The program is also designed to improve the performance of DOT contractors and subcontractors, foster the establishment of long-term business relationships between small businesses and prime contractor, and increase the overall number of small businesses that receive DOT contract and subcontract awards.

### **Mentor-Protégé Program Goals**

- a. Maximize, motivate and encourage mentors to provide developmental assistance to protégés;
- b. Small business access to DOT's procurement programs;
- c. Foster long-term business relationships;
- d. Enhance small businesses core capabilities; and
- e. Increase subcontracting opportunities for small businesses.

### **Benefits to Mentor**

- a. Goodwill and corporate responsibility (mentors receive no financial incentive for participation);
- b. Long-term relationship with a potential subcontractor;
- c. Develop innovative approaches and technology; and
- d. Potential Joint Venture with small business.

### **Benefits to Protégé**

- a. Business and/or financial management;
- b. Business planning and projections;
- c. Business Development;
- d. Long-term relationship with a potential prime contractor;
- e. Develop innovative approaches and technology;
- f. Potential Joint Venture with large business; and

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<sup>1</sup>This is a new program. More details will be added in future program plans.

- g. Develop strong business capabilities to compete and perform in federal government contracts.

## Definitions

Throughout this manual the term "small business" includes all categories of small firms on whose behalf the DDOT Office of Civil Rights is chartered to advocate, including a) small businesses, b) small disadvantaged businesses, c) S(a) firms, d) women-owned small businesses, e) veteran-owned small businesses, f) service-disabled veteran-owned small businesses, and g) small businesses located in HUB Zones. The following definitions are intended to be consistent with those used in Small Business Administration (SBA) and other Federal procurement programs:

1. An 8(a) firm is a small business concern participating in SBA's 8(a) Business Development Program;
2. A HUB Zone business is a qualified small business concern located in historically under-utilized business zones that are in an area located within one or more qualified census tracts, a qualified non-metropolitan county, or lands within external boundaries of an Indian reservation; and
3. A mentor is a prime contractor that elects to promote and develop small business subcontractors by providing developmental assistance designed to enhance the business success of the protégé. The mentor can be a business that has graduated from the 8(a) Business Development program, a firm in the transitional stage of the program, and/or a small or large business.

USDOT/OSDBU at the Federal Government level was created as part of the Small Business Act (SBA) to ensure that small and disadvantaged businesses are provided maximum practicable opportunity to participate in the agency's contracting process. Pursuant to Public Law 95-507, every federal agency is required to have an Office of Small and Disadvantaged Business Utilization. Additionally, in the spirit and intent of the Federal Law, DDOT's Office of Civil Rights, DBE Supportive Services Program, is the primary advocate within DDOT responsible for promoting the maximum practicable use of all designated small business categories within the Federal Acquisition process. The goal of the DBE Supportive Services Manager is to advocate for and manage the small business utilization programs for their organization.

1. A protégé is a small business, small disadvantaged business, women-owned small business; HUB Zone small business; veteran-owned small business, or service disabled veteran owned small business that is the recipient of developmental assistance pursuant to a Mentor-Protégé arrangement.
2. A Small Business (SB) is a concern, including its affiliates that is independently owned and operated. It is not dominant in the field of operation in which it is bidding on government contracts, and is qualified as a small business in its primary NAICS code under the criteria and size standards in 13 CFR Part 121.
3. A Service-Disabled Veteran-Owned Small Business (SDVOSB) is small business owned by a veteran with a service-related disability as defined by the Department of Veteran's Affairs.
4. A Small Disadvantaged Business (SDB) is a small business owned and controlled by socially and economically disadvantaged individuals as defined by Federal Acquisition Regulation (FAR) 19.001.
5. A Veteran-Owned Small Business (VOSB) is a small business that is at least 51 percent owned by one or more veterans; or, if a publicly owned business, at least 51 percent of the stock is owned by one or more veterans. Also, one or more veterans control management and daily business operations of the firm.

6. A Women-Owned Small Business (WOSB) is a small business that is at least 51 percent owned by a woman or women as defined by FAR 19.001, including economically disadvantaged women owned small businesses (EDWOSB).

## **General Policy**

1. Eligible business prime contractors (not under a suspension or debarment action and not in the Excluded Parties List System (EPLS) database) approved as mentor firms may enter into arrangements with eligible protégés. Mentors provide appropriate developmental assistance to enhance the capabilities of protégés to perform as contractors and/or subcontractors.
2. Eligible small business prime contractors (not under a suspension or debarment action and not in the EPLS database) capable of providing developmental assistance may act as mentors.
3. Protégés may participate in the program in pursuit of a prime contractor as Subcontractors under the mentor's prime contract with the DOT.
4. Mentors and protégés are solely responsible for finding their counterpart. Therefore, we strongly encourage firms to explore existing business relationships in an effort to establish a Mentor-Protégé relationship.
5. Mentor-Protégé arrangements should be for up to thirty six months.

## **Measurement of Program Success**

The overall success of the Mentor-Protégé Program will be measured by the extent to which it results in:

1. An increase in the quality of the technical capabilities of the protégé firms;
2. An increase in the number, dollar value and percentage of contracts or subcontracts awarded to protégés since the date of entry into the program; and
3. An increase in the number and dollar value of contract and subcontract awards to protégé firms since the time of their entry into the program.

We mandate participants to provide an annual report and a program evaluation report at the conclusion of their agreement that addresses the following:

1. Detailed actions taken by the mentor, to increase the participation of protégé as seller to the Federal Government;
2. Detailed actions taken by the mentor, to develop the technical capabilities of a protégé as defined in the arrangement;
3. The degree to which the protégé has met the developmental objectives in the arrangement; and
4. The degree to which the mentor firm's participation in the Mentor-Protégé Program resulted in the protégé receiving contract(s) and subcontract(s) from private firms, DOT or any other federal agency.

## **Mentor Firms**

Eligibility: The mentor can be a business that has graduated from the (a) Business Development program, (b) a firm in the transitional stage of the program, or (c) a small or large business. In addition, the mentor should be able to show that it is currently eligible for Federal contracting opportunities, is not under a suspension and/or debarment action, and is not in the EPLS database. Mentors may have multiple protégés. For this program, mentors will consist of DOT prime contractors.

## **Protégé Firms**

Eligibility: a protégé should be a Small Business (SB), HUB Zone, small disadvantaged business, women-owned small business, veteran-owned small business, or service-disabled veteran owned small business. In addition, the protégé should be able to show that it is currently eligible for Federal contracting opportunities, is not under a suspension or debarment action, and is not in the EPLS database. Protégés may have multiple mentors.

## **Selection of Mentor or Protégé Firms**

Mentor and protégé firms are responsible for selecting their counterpart. The mentor is encouraged to select from a broad base of Small Businesses including SB, SOB, WOSB, VOSB, SDVOSB, and HUB Zone firms whose core competencies support the Department of Transportation's mission.

## **Mentor-Protégé Process**

Firms interested in entering into a Mentor-Protégé relationship should provide written documentation of their arrangement to DDOT's Office of Civil Rights, DBE/SS Program Manager. This will provide coordinator the opportunity to evaluate the nature and extent of technical and managerial support, and traditional subcontracting support involved in the Mentor-Protégé relationship, enabling Supportive Services to provide advice and assistance to the parties. The Supportive Services Coordinator will accept a limited number of arrangements for review during the following months in order to establish consistent internal processes.

The Mentor-Protégé arrangement should contain:

- a. Name, address, phone, and email of mentor and protégé firm(s) and a point of contact within both firms who will oversee the arrangement;
- b. A description of the type of developmental program that will be provided by the mentor firm to the protégé firm, including a schedule for providing assistance, and criteria for evaluation of the protégé's developmental success;
- c. Program participation term;
- d. Other terms and conditions, as appropriate; and
- e. Procedures for the mentor's voluntary withdrawal from the program including notification of the protégé firm and to DDOT's DBE SS Program Manager. The mentor should provide at least 30 days' written notice to DDOT's DBE/SS Program Manager before withdrawing from the program.

The DBE/SS Program Manager will review a Mentor-Protégé arrangement no later than 30 days after receipt. Following the DBE/SS Program Manager's review, the mentor may implement the developmental assistance program.

## **DBE/Supportive Services Review of Mentor-Protégé Arrangements**

1. The arrangement defines the relationship between the mentor and protégé firms only. The arrangement itself does not create any privacy of contract between the mentor or protégé and DDOT

2. The DBE/SS Program Manager or their designate will review the information to ensure the mentor and protégé are both eligible for the program and provide appropriate advice and assistance to the firms concerning the arrangement and its implementation.
3. The DBE/SS Program Manager notifies the parties if changes in the arrangement are advisable in order to make the arrangement meet the objectives of the Mentor-Protégé Program. The mentor and protégé should incorporate DDOT's DBE/SS Program Manager's recommendations before implementing the arrangement.
4. Upon completion of the review, the mentor may implement the developmental assistance program.

## **Developmental Assistance**

The forms of developmental assistance a mentor may provide to a protégé include:

1. Management or technical assistance;
2. Overall business management/planning;
3. Cooperation on joint venture projects;
4. Rent-free use of facilities and/or equipment;
5. Temporary assignment of personnel to protégé for the purpose of training; and
6. Any other types of mutually beneficial assistance.

## **Internal Controls**

1. The DBE/SS Program Manager will oversee the program to achieve program objectives;
2. The DBE/SS Program Manager will review and evaluate Mentor-Protégé arrangements for practicality, and accuracy of provided information;
3. The DBE/SS Program Manager reserves the right to perform site visits where Mentor-Protégé activity is performed;
4. The DBE/SS Program Manager will review annual reports to measure protégé progress against the established developmental assistance included in the approved arrangement; and
5. If the DBE/SS Program Manager determines that the objectives of the arrangement are not met, the DBE/SS Program Manager upon consultation and approval by the Chief, Office of Civil Rights, may conclude the existing Mentor-Protégé arrangement if it is determined that such actions are in the best interest of the agency. The DBE/SS Program Manager will communicate this decision in writing that will be sent to the mentor and protégé after approval by the Chief, Office of Civil Rights.

## **DDOT Contact Information for the Mentor-Protégé Program**

For general information about the Mentor-Protégé Program, please contact our DBE Supportive Services Program, District Department of Transportation, Office of Civil Rights at (202) 645-8620.

## **FREQUENTLY ASKED QUESTIONS (FAQs)**

### ***1. What types of Small Business firms are eligible to participate in the Mentor- Protégé Program?***

Firms eligible to participate in the Mentor-Protégé Program include those certified as small business, HUB Zone, 8(a), small disadvantaged business, women-owned small business, veteran owned small business, or service-disabled, veteran-owned small business.

***2. What are the requirements for a protégé?***

The protégé can be a small business, small disadvantaged business, 8(a) firm, women owned small business, HUB Zone, veteran owned small business or service disabled veteran owned small business, and a federal contractor in good standing.

***3. What are the requirements for a mentor?***

The mentor can be a business that has graduated from the 8(a) Business Development program, a firm in the transitional stage of the program, or a small or large business. In addition, it should demonstrate that it is a federal contractor in good standing. For this program, mentors will consist of DOT prime contractors.

***4. How many mentors can a protégé have?***

Protégés may have multiple mentors.

***5. How many protégés can a mentor have?***

Mentors may have multiple protégés.

***6. What are the benefits/incentives to the mentor for participating in the program?***

The mentor is solely responsible for selecting a protégé with whom they believe they can develop a successful relationship. Thus, mentors should consider the following attributes or characteristics when selecting a protégé:

- Mentors can develop long-term relationships with potential subcontractors that have critical skills. These skills can be used to complement or diversify their company while competing for federal contracts.
- A good mentor-protégé relationship builds trust and loyalty between the mentor and Protégé.
- Mentor-Protégé arrangements may provide the Government with greater assurance that a protégé subcontractor will be able to perform better under the contract than a similarly situated non-protégé subcontractor.
- Develop innovative approaches and technology.
- Potential Joint Venture with protégé.
- Goodwill and corporate responsibility.

***7. Are there certain times of year that companies can submit Mentor-Protégé arrangements for approval, or can they be submitted at any time during the year?***

There's no time limitation to submit Mentor-Protégé arrangements.

***8. What should a mentor consider when selecting a small business protégé?***

- A previous, established association is highly recommended between the mentor and protégé.
- How the assistance aligns with the protégé’s strategic vision.
- Commitment to the relationship by both parties.
- Capabilities of the protégé and how they interface with the mentor.
- Stability of the protégé’s management and financial status.
- Protégé’s past performance.
- Results of any contract/subcontract work between the mentor and protégé.
- Subcontracting expectations.

## **PROGRAM PARTICIPANTS**

DDOT’s list of program participants will be available on the website: [www.ddot.dc.gov](http://www.ddot.dc.gov).

## **Section 26.37 Monitoring and Enforcement Mechanisms**

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

1. If it is determined that a prime contractor is not in compliance, the DBELO may so advise the prime contractor, in writing, citing the deficiencies and defining the corrective action to be taken. The prime contractor and the DBELO may meet informally to discuss any problems with compliance. Suggestions and recommendations may be made to the prime contractor to correct the deficiencies within a specific time frame. If the deficiencies are not corrected within the timeframe specified, the DBELO will inform the Supervisory Contract Specialist that the Contractor is out of compliance. The Supervisory Contract Specialist shall issue a written notice informing the prime contractor that it is not in compliance and set forth the areas of noncompliance. The written notice from the Supervisory Contract Specialist shall provide the prime contractor with ten (10) Calendar Days from receipt of the written notice to correct any areas of non-compliance or to demonstrate that the prime contractor has used good faith efforts to comply with the DBE plan. If the prime contractor fails to correct any areas of noncompliance or demonstrate good faith efforts within the ten (10) day period, the Contracting Officer shall take the following actions in accordance with 27 DCMR 804.9, 39 DCR 5578 (July 24, 1992):
  - a. Assess liquidated damages beginning on the first day after the end of the ten (10) day period;
  - b. Determines the noncompliance to be a material breach of the Contract and terminates the Contract under the Default Clause of the Standard Contract Provisions, of which the Contractor shall be liable for aforementioned Liquidated Damages accruing until the time the District may reasonably obtain similar goods and services; or
  - c. Withholding of partial estimates until compliance is achieved.
2. DDOT will bring to the attention of the USDOT Office of Inspector General (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.  
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; and
  - c. Prosecution pursuant to 18 USC 1001.
3. DDOT has a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This is accomplished by a multi-level process.
4. During the pre-proposal conference, the Senior Equal Opportunity Local and Federal Compliance Officer meets with and educates the prospective bidders of the DBE regulatory requirements and provides his/her contact information for additional inquiries and clarifications;
5. During the pre-construction meeting, the Senior Equal Opportunity Local and Federal Compliance Officer or other OCR designated staff, will inform the attendees of the meeting of the DBE regulatory requirements, including which DBEs are expected to work on each project; what tasks are expected to be completed, and for what sum of money. The attendees will include: the project engineer and project management team, Prime Contractor and its staff; DBE and non-DBE subcontractors, and other DDOT staff assigned to contract compliance of this project.
6. The Senior Equal Opportunity Local and Federal Compliance Officer or its designate will regularly attend progress meetings and/or receive bi-weekly reports from the field to monitor the progress of the designated DBE firm(s) on the project. Topics of discussion during the meeting may include, when the DBE firm(s) is expected to perform its commercially useful function; address any potential problems of non-compliance; acknowledge progress towards DBE goal attainment and other matters that are relevant to compliance.
7. The Senior Equal Opportunity Local and Federal Compliance Officer or its designate will visit the project work site at times which, according to the on-site management team, the DBE firms are expected to perform. The site visits will be unannounced and will be memorialized by the completion of a site visit report that will be maintained in the project's contract file in the OCR.
8. Reports and photographs may be made available electronically to all members of the staff of the OCR.
9. **During the course of the contract performance period**, OCR will maintain regular written communication with the DBE contractor and sub-contractor to inquire about work actually completed, and anticipated to be completed. The communication will be documented and maintained in the project's contract file in the OCR.
10. During the performance of contracts, monitoring is conducted by the Project Engineer or their designate in conjunction with the Senior Equal Opportunity Local and Federal Compliance Officer or its designate to ensure that: a) the type of work and the value of work performed is consistent with work stated in the scope of work; b) the DBE is performing a "commercially useful function" by actually performing, managing and supervising the work with its own workforce, and c) the equipment utilized is either owned or leased by the DBE. The OCR staff will use the Commercially Useful Function (CUF) form (Attachment 4) or this activity. Onsite monitoring will take place at a minimum of once per month or more frequently depending upon the duration of the project. The CUF form and other relevant compliance monitoring information will be maintained in the project's contract file in the OCR

## Written Certification

1. The CUF forms completed by the Senior Equal Opportunity Local and Federal Compliance Officer and/or the project engineer or its designate, as maintained in the compliance system and/or the project file shall serve as **written certification** by DDOT that contracting records have been reviewed and work monitored relative to distinct elements of each DBE subcontract.
2. Currently, DDOT requires prime contractors to report all DBE payment activities electronically through its electronic reporting system. The system allows DDOT to maintain a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), in addition to commitments. DDOT's Senior Equal Opportunity Local and Federal Compliance Officer will monitor the payments and verify receipt of subcontractor payments from the prime contractor to ensure compliance in accordance with the District's prompt payment provisions. DDOT requires each subcontractor to acknowledge receipt of payments identified as made to the subcontractor in the electronic compliance system by registering the date the subcontractor receives the payment from the prime contractor. In addition, this information is also verified again at contract closure by requiring the Prime and the DBE subcontractor to complete the DBE Contractor Payment form (See Attachment 3).
3. DDOT maintains a running tally of actual payments to DBE firms for work committed to them at the time of contract award. Once per month, prime contractors shall submit copies to DDOT OCR 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.

## 49 CFR 26.39 Small Businesses

### Small Business Enterprise (SBE) Program Overview

This supplement is a part of the 2015 Disadvantaged Business Enterprise Program Manual to which it is attached, and sets forth additional DBE program requirements applicable to the SBE Program. The DDOT, in accordance with 49 CFR Part 26.39 and Part 26.51, seeks to enhance and facilitate contracting opportunities for DBEs by establishing a race and gender neutral SBE program for federal-aid projects funded by the USDOT.

The goals of the SBE Program<sup>2</sup> are to facilitate competition, eliminate obstacles, and increase opportunities for small businesses, including DBEs and Certified Small Business Enterprises (CSBEs), to participate as prime contractors on DDOT projects without competing with larger, more established businesses. Successful bidders will gain practical experience and develop expertise that will enable them to better compete on successive projects as prime contractors and expand their business opportunities.

### SBE Program Eligibility

1. A firm must be a small business as defined by the standards prescribed by the U. S. Small Business Administration (SBA). DDOT shall apply current SBA business size standards as

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<sup>2</sup>The program will commence later during third quarter FY 2016 pending appropriate agency and governmental approvals. The process that DDOT will use to identify projects for the SBE program in addition to the function of the committee members will be determined at a later date.

established at 13 CFR Part 121 that are applicable to the work the firm seeks to perform in USDOT-assisted contracts;

2. The firm's average annual gross receipts, as defined by SBA regulations, during the firm's previous three fiscal years cannot exceed the amount set forth in 49 CFR Part 26.65;
3. If a business has not existed for three (3) years, the employment and gross sales shall be the average(s) for each year or part of year during which the business has been in existence.
4. At least 51% of the firm's ownership must be held by individuals who meet the personal net worth (PNW) cap prescribed by 49 CFR Part 26.67; and
5. For the purposes of implementing this program a Small Business is defined (13 CFR 121) 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, DC Department of Local and Small Business Development (DSLBD) or by the Metropolitan Washington Unified Certification Program (MWUCP), which includes the District Department of Transportation and the Washington Metropolitan Area Transit Authority (WMATA) and can provide to DDOT a copy of their active 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, the Contractor Central Registration System and federal tax returns.

**SBE Certification Process**

DDOT has developed and implemented an online application for SBE certification. This online tool allows race neutral, non-gender specific small businesses to self-certify in the program. The program is based upon the Federal Regulations at 13 CFR Part 121. Applicant firms will be able to apply for SBE certification by submitting their information through an online system which will essentially allow for the applicant firm to be registered and listed in the small business database registry. An immediate appellate process is available to firms that do not complete the online certification process because of the information received in processing their applications. Overall, this process is intended to facilitate a larger pool of small businesses in various industries used by DDOT and prime contractors, without imposing a burdensome process upon small business applicants seeking certification. This online process will be fully implemented and operational by the third quarter of Fiscal Year 2016.

Small businesses already certified as Certified Business Enterprises (CBE) or Disadvantaged Business Enterprises (DBE) need not apply for SBE certification. Their firms will be "grandfathered" into the SBE database.

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
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**Small**

Water, Sewer Line and Related Structures	\$36.5 million
Heavy Highway, Bridge & Civil Engineering	\$36.5 million
Poured Concrete Foundation and Structure Contractors	\$15.0 million
Structural Steel and Precast Concrete Contractors	\$15.0 million
Electrical Contractors & Other Wiring Installation Contractors	\$15.0 million
Painting Contractors	\$15.0 million
Site preparation Contractor (Demolition/Excavation Contractors)	\$15.0 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)	\$27.5 million
Engineering/Architect Services	\$7.0 million
Administrative Management and General Management Consulting Services	\$7.0 million
Landscaping Services	\$7.0 million
Specific size standards for Small Business in procurement solicitations should be cross referenced to the SBA website: <a href="http://sba.gov/category/navigation-structure/contracting-officials/eligibility-size-standards">http://sba.gov/category/navigation-structure/contracting-officials/eligibility-size-standards</a> .	

**Business Administration (SBA) Size Standards**

A business in one of the following industry groups is considered to be small if its size is not greater than size standard listed for the respective industry group. Below, is a sample of industry groups and corresponding size standards.

**Definitions** -The following definitions apply to this program:

a. **"Disadvantaged business"** means a small business concern, (a) which is at least fifty-one percent (51%) owned by one or more socially and economically disadvantaged individuals or in the case of any publicly owned business, at least fifty-one percent (51%) of the stock of which is owned by one or more socially and economically disadvantaged 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.

b. **"Small business concern"** means, with respect to firms seeking to participate as SBEs 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).

## **SBE Contract Selection Criteria**

1. DDOT's Chief Procurement Officer, in consultation with the Chief of the Office of Civil Rights, the Chief Engineer and appropriate Project Managers, or their respective designates, set aside an overall percentage of its annual total dollar value of USDOT-assisted contracts directly to SBEs;
2. DDOT's Chief Procurement Officer, in consultation with the Chief Engineer Chief of the Office of Civil Rights, and appropriate Project Managers, or their respective designees, will meet periodically throughout the fiscal year to determine appropriate projects for contract awards to small businesses. The factors to be considered in establishing the annual SBE Program overall goal include, without limitation, the following:
  - a. Availability of ready, willing and able SBEs to participate on USDOT-assisted contracts;
  - b. USDOT-assisted contracts potentially suitable for SBE participation; and
  - c. Current overall DBE Program goal, including both the race-conscious and race-neutral components.
3. DDOT will evaluate all USDOT-assisted contracts to determine their suitability for designation as a contract in the SBE Program using the following criteria:
  - a. The estimated value of the contract based on the engineers' estimate;
  - b. Whether the project can be unbundled to facilitate its suitability for the SBE Program;
  - c. The identification of a reasonable number of SBE firms in the MWUCP Directory certified to perform the products and/or services to be provided under the contract; and
  - d. The geographical proximity, when relevant, of certified SBE firms identified from DDOT's directory to the location of the work to be performed; and
4. SBE Contracts shall be evaluated at the beginning of each fiscal year, utilizing the forecast of projects to determine suitable projects for award under the SBE program.

## **SBE Program Directory**

1. The DBE Directory currently maintained by the MWUCP shall be modified to include a listing and designation of SBE certified firms for use by DDOT personnel in identifying firms eligible to participate in procurements designated for the SBE program;
2. Continued eligibility for certified SBE firms will be evaluated every year:
  - a. In order to maintain a certification in the SBE Program, the firm must continue to meet the eligibility requirements set forth at 49 CFR Part 26.65 and Part 26.67, including applicable business size standards and PNW requirements.
  - b. Each firm certified in the SBE Program must annually submit an affidavit to the Office of Civil Rights affirming its continued eligibility to participate in the SBE program.
  - c. If a firm is also certified as a DBE or CSBE in the District of Columbia, only one affidavit will be required for continued eligibility and certification in the SBE Program.

## **Prompt Payment/SBE Contract Compliance System**

**Prompt Payment:** The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than no later than 7 days from the receipt of each payment

the prime contract receives from DDOT. The prime contractor agrees further to return retainage payments to each subcontractor within no later than 7 days after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the DDOT. This clause applies to both "SBE and non-SBE subcontracts." Failure to do so shall be grounds for appropriate action against the party involved (e .g. findings of non-responsibility for future contracts and/or suspension and debarment).

**SBE Contract Compliance System:** This contract is subject to contract compliance tracking, and the prime contractor and any subcontractors are required to provide any noted and/ or requested contract compliance-related data electronically in the Contract Compliance System. The prime contractor and all subcontractors are responsible for responding by any noted response date or due date to any instructions or request for information, and to check the Contract Compliance System on a regular basis to manage contact information and contract records. The prime contractor is responsible for ensuring all subcontractors have completed all requested items and that their contact information is accurate and up-to-date. DDOT's OCR may require additional information related to the contract to be provided electronically through the system at any time before, during, or after contract award. Information related to contractor access of the system will be provided to a designated point of contact with each contractor upon award of the contract. The Contract Compliance System is web-based and can be accessed at the following Internet address: <https://ddot.dbesystem.com>.

The prime contractor must upload and report the following items:

1. The prime contractor must report all payments to SBE firms and all subcontractors into the Contract Compliance System by the 15th of the month for the previous month activity under this project. All payments must be reported into the Contract Compliance System monthly even if there is no activity for the month;
2. Upload all signed agreements between the prime SBE firms and their subcontractors into the Contract Compliance System; and
3. Copies of all cancelled check payments to SBE firms should be forwarded to the Office of Civil Rights Mohammed.Kabir@dc.gov by the 15th of the month for the previous month's activity. A form **MUST** be completed monthly even if there is no activity for the month. Failure to do so shall be grounds for appropriate action against the party involved (e.g.: findings of non-responsibility for future contracts and/or suspension and debarment).

This online system allows prime contractors to actively support our efforts to achieve diversity participation, maintain accurate contact information, and report subcontractor payment details. The prime contractor is required to log in to review and update certain specific information regarding payments to subcontractors, and all contact information (name, address, phone, fax, email) for the firm and the subcontractors. The prime contractor must also identify who in the firm is the main contact for each contract. To begin, prime contractors should follow the steps below:

1. Visit <https://ddot.dbesystem.com>. Follow the on-screen directions to look up your account and then access the secure system. Contact Customer Support via any of the system links if you have any questions while attempting to access your account.
2. Review and update all contact and contract information as necessary for your firm and subcontractors.
3. Ask your subcontractors to log in to review and confirm amount reported for each time period.

The contractor **MUST** log into the system to review and update the required information **within 10 business days**. The Prime Contractor is responsible for ensuring that all required information

is entered, that it is accurate, and that the subcontractors verify payments received. Failure to cooperate with the Office of Civil Rights may result in breach of contract.

Each month from contract award until close out, the Prime Contractor is also required to log-in and report payment information. Payment information is reported by completing the pending Contract Audits which can be accessed from your Dashboard by clicking on “Contract Audits”. For each monthly audit, click on “Incomplete” in the Status column and report the amounts paid to each subcontractor during the month. You will also report the amount paid to you as the prime for the time period.

Repeat these steps for any additional incomplete audits on this or additional contracts that are assigned to you in the system.

**The prime contractor may also register for upcoming training sessions to learn more about system functionality, as well as classes that focus specifically on reporting payment to subcontractors.** To register, click on “Training Classes” under Help & Tools from any screen in the system and click RSVP next to the “Contract Compliance Reporting – Vendor Training.” You can also access the training classes without logging in here <https://ddot.dbesystem.com/events.asp>. Additional information is available by clicking on the “Information for Vendors” link on the right-hand side of the home page under System Links.

There is no cost to Contractors for this service. The prime contractor may add as many users to their account as necessary to report and view contract compliance data (please do not share accounts between people). If technical assistance is required during this process, please use the online support form or email [DDOT@dbesystem.com](mailto:DDOT@dbesystem.com).

To register please contact:

**Mohammed Kabir, PHR**

Senior Equal Opportunity 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](mailto:Mohammed.Kabir@dc.gov)

There is no cost to prime contractors for this service. Prime contractors may add as many users to your account as necessary to report and view contract compliance data (please do not share accounts between people). If you require technical assistance during the process, please use the online support form or email [ddot@dbesystem.com](mailto:ddot@dbesystem.com).

For additional information on SBE Compliance, please contact the OCR:

**Leutisha Stills**

Equal Opportunity Specialist/SBE Coordinator  
Office of Civil Rights  
District Department of Transportation  
55 M Street, SE, 3rd floor  
Washington, DC 20003 (202) 671-0479,  
Email: [leutisha.stills@dc.gov](mailto:leutisha.stills@dc.gov)

## **Contract Assurance /SBE Contract Goals**

### **Contract Assurance**

The Contractor, Sub-recipient, Sub-consultant or Subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of contracts. The Contractor shall carry out all the applicable requirements of 49 C.F.R. Part 26 in the award and administration of USDOT-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.

Furthermore, Title VI of the Civil Rights Act of 1964 assures that no person or group of persons may, on the grounds of race, color, national origin, sex, age, handicap or disability, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs or activities administered by DDOT. For further information regarding Title VI, please contact the Office of Civil Rights, 55 M Street S.E. 3rd Floor, Washington, DC 20003. Our telephone number is: (202) 671-2620.

The above information is applicable to every Contractor including every tier of sub-consultants, subcontractors, supplier or service providers on this project. It is the responsibility of the prime Contractor, and all sub-consultants, subcontractors, suppliers and service providers to ensure equal opportunity for all firms to participate on this project.

There is no specific numerical SBE goal assigned to this project. While no numeric SBE goal is assigned to contracts, the Contractor, sub-recipient, sub-consultant or subcontractor is required to make every reasonable effort to solicit SBE firms to participate as sub-consultants, subcontractors, service providers and suppliers on this project. Reasonable efforts should be documented by the Contractor and available to DDOT's Office of Civil Rights for review during the duration of the contract.

The Contractor may find SBE firms certified by the DDOT Unified Certification Program in DDOT's Disadvantaged Business Enterprise/Small Business (DBE/SBE) Directory. Beginning in third quarter FY2016, the DBE/SBE Directory will be found at the following website:

<http://ddotfiles.com/db/DBE/SBE.php><sup>3</sup>

### **SBE Directory**

Our SBE Directory is a great resource for our Prime Contractors to identify partners that are SBE Certificated with the District Department of Transportation and Washington Metropolitan Area Transit Authority. Our SBE Directory is updated monthly.

If a proposed partner from the prime contractor is not in the DDOT SBE Directory, please contact our office at 202-671-0479.

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, DDOT will refine and implement the small business program including the following provisions:

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<sup>3</sup> DDOT anticipates the SBE directory will be available during third quarter FY 2016 pending appropriate agency and governmental approvals.

1. DDOT will avoid unnecessary and unjustified bundling of contract requirements through consultation with designated Project Managers, the Chief Engineer and OCR. The federal regulations define bundling as the "consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business." A number of factors are considered in determining whether the single contract is "unsuitable" for a small business, including the nature of performance requirements, the size of the contract, and geographic dispersion of performance sites. 15 U.S.C. 632(o) (2); FAR 2.101; 13 CFR 125.2(d). This definition does not capture all of DDOT's procurements. Some projects are bundled because it is most efficient to bundle them such as bridge projects. Efforts will be made annually to review the obligation plan for possible opportunities. The Chief Engineer or designate will review projects prior to design to determine what aspects of the project can be separated for small business utilization and participation. The selection team will consist of: the Chief Procurement Officer or designate; the Chief Engineer or designate; appropriate Project Managers or designate; the SBE Program Coordinator; and the Chief, OCR.
2. Utilize DDOT's obligation plan for each fiscal year (the plan for obligating DDOT's capital projects) to develop small business utilization for upcoming contracting opportunities. DDOT's Chief Procurement Officer and Chief Engineer will review the obligation plan annually to determine on a project by project basis which construction and engineering services projects will be suitable to be included in the small business set-aside program.
3. Identify small business opportunities on a contract by-contract basis on USDOT assisted construction contracts and on non-construction procurements (i.e. contracts for services, supplies, and equipment). The Chief Procurement Officer and Chief Engineer will make good-faith efforts to offer these opportunities to small businesses first. DDOT will screen construction management contracts for possible opportunities for small businesses.
4. OCR will coordinate with Program Managers or their designate 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 Civil Rights DBELO or Senior Equal Opportunity Local and Federal Compliance Officer 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 Civil Rights, 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.
5. Report to USDOT-FHWA small business participation including payments actually made to small businesses on USDOT assisted contracts, when required. DDOT will track semi-annually performance and provide this information as needed to FHWA and FTA.
6. DDOT implements extensive outreach activities and develops new partnerships to provide technical assistance and making referrals of small businesses to financial institutions for

assistance such as: The Industrial Bank of Washington, the National Community Reinvestment Coalition and the U.S. SBA - Small Business Resource Centers.

7. Makes 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 - [www.DDOT.dc.gov](http://www.DDOT.dc.gov).
8. 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. The small business prime contractor must report all payments to SBE firms and all subcontractors into the Contract Compliance System by the 15th of the month for the previous month activity under this project. All payments must be reported into the Contract Compliance System monthly even if there is no activity for the month.
9. All prime small business contractors shall submit monthly progress reports on small business utilization into the Contract Compliance System. 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.
10. On contracts that do not include DBE contract goals, these contracts may be considered for competition by small business firms that meet the designated size standard requirements and can reasonably perform on DDOT's federal-aid projects.
11. DDOT will 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 contractors.
12. DDOT will establish an annual scholarship for small businesses in need of business assistance<sup>4</sup>. Scholarship funds are being identified to support the business owners' technical assistance. DDOT in conjunction with business schools and large construction firms will sponsor small businesses participation in certificate programs at building capacity, and improving efficiency and productivity.

## **Program Participants**

DDOT's list of program participants will be available on the website: [www.ddot.dc.gov](http://www.ddot.dc.gov).

## **Section 26.43 Set-Asides Or Quotas**

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

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<sup>4</sup> DDOT anticipates developing this initiative over the next three years in progressive increments.

## Subpart C - Goals, Good Faith Efforts and Counting

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 5 to this program. This section of the program may be updated annually. In accordance with Section 26.45(f), DDOT submits its overall goal to USDOT on August 1 triennially in accordance with the FHWA/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.

During this consultation period, DDOT will publish a notice of a public meeting to receive comments on the proposed goal, which is available on DDOT's website at: <http://ddot.dc.gov/publication/goal-setting-methodology-fhwa-funded-projects>. DDOT may, at its discretion, provide for inspection of the proposed goal and its rationale during normal business hours at DDOT's OCR for 30 days following the date of the notice. In addition to publishing the notice of proposed overall goals on the agency's website, DDOT may publish the notice of proposed overall goals in the following print media outlets:

- a. Afro-American Newspaper
- b. Kaggwa Communications/The District Chronicles
- c. The Washington Hispanic
- d. The Washington Informer
- e. The Washington Times

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

DDOT's overall goal submission to USDOT will include a summary of information and comments received during this public participation process and our responses.

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

The public notice, participation, and comment period will be completed and included in DDOT's DBE Goal Methodology by the August 1<sup>st</sup> deadline.

## **Section 26.47 Goal Setting and Accountability**

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; and
3. 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 FHWA/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, FHWA, 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(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 6 to this program. This section of the program will be updated annually when the goal calculation is updated.

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

For FHWA federal-assisted projects, DDOT estimates that, in meeting an overall goal of **18%**, the agency will obtain **6%** from race-neutral participation and **12%** through race-conscious measures.

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

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. (Attachment 7)

### **Section 26.51(d-g) Contract Goals**

DDOT uses contract goals to meet the race-conscious portion of the overall goal not being met using race-conscious 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 our overall goal that is not projected to be met through the use of race-neutral means. **However, in accordance with 49 CFR Part 26**, the DDOT's Office of Civil Rights will establish contract goals only on those DOT-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 location of work, availability of DBEs to perform the particular type of work.)

DDOT will express our contract goals as a percentage of the 80 percent (Federal-share) amount of a DOT-assisted contract. Contract goals will be set by the DDOT OCR's Senior. Equal Opportunity Local and Federal Compliance Officer or an assigned designee supervised by DDOT's Chief, OCR. The methodology for setting individual contract goals is as follows:

The Senior Equal Opportunity Local and Federal Compliance Officer or its designate confers with the project engineer, utilizing the project estimate to determine the greatest number of potential subcontracting opportunity for DBE subcontracting based upon the NAICS codes.

The Project Engineer is provided a worksheet (See Attachment 6) to be completed identifying the percentage of the scope of work for the different tasks associated with the appropriate NAICS codes.

Reviewing the DBE directories for both DDOT and WMATA, the formula in determining the goal, as prescribed in 26.45 is pre-formatted in the document that provides the calculation of the DBE goal. The calculation is reviewed by the DBELO, and if appropriate, based upon real-time market availability, may be adjusted to reflect a realistic contract goal. In the event that additional information is provided or other conditions impact the feasibility of the established goal, i.e., reduced funding, change orders that either increase or decrease the project total, the Chief of OCR retains the right to determine whether or not an adjustment is needed. The adjustment of the project goal is not automatic and the impact of such adjustment on the scope of work to be performed by DBEs and the legal basis for the adjustment is the utmost priority in OCR's consideration.

The contract goal is communicated to the Project Engineer and the Contract Specialist to be included in the bid specification for advertisement and compliance.

The worksheet is inserted into the project contract file and maintained in the OCR.

DDOT will express our contract goals as a percentage of the total estimated dollar value of the contract, if the project receives FHWA or FTA funds. DDOT does not set goals exclusively on the FHWA portion,

but in the future, DDOT will consider calculating contract goals as a percentage of the total amount of USDOT-assisted contracts.

## **Section 26.53 Good Faith Efforts Procedures**

### **Demonstration of Good Faith Efforts: 26.53(a) & (c)**

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. The offeror can accomplish this task by providing either of the following:

1. Documents that it has obtained enough DBE participation to meet the goal (see DBE Utilization Form, Attachment 4); 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.

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. Examples of good faith efforts are found in Appendix A to Part 26.

### **Information to be submitted: 26.53(b)**

DDOT treats bidder/offerors' 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. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
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; and
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment.
6. If the contract goal is not met, evidence of good faith efforts. If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract;
7. At DDOT's discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section;
8. Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or
9. No later than 7 days after bid opening as a matter of responsibility. **The 7 days shall be reduced to 5 days beginning January 1, 2017.**
10. Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid

submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

All information must be 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.

#### **Administrative Reconsideration: 26.53(d)**

Within 5 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 Michelle 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](mailto: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 U.S. Department of Transportation.

#### **Good Faith Efforts on Alternative Project Delivery Methods 26.53(e)**

In the instance where DDOT uses an alternative project delivery method such as "design-build" or other "turnkey" contracting vehicles, in which the agency lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, DDOT may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. DDOT retains the right as required by 49 CFR Part 26.53(e), to maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

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:

**William Sharp**  
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.

### **DBE Utilization Form**

The DBE Utilization Form is a compliance tool to monitor a prime contractor's good faith effort. The form is included in the bid documents for the projects. The process for completing the DBE Utilization Form is as follows:

1. Enter the Project Number or Solicitation Number;
2. Enter the DBE Goal noted in the Contract/Solicitation documents;
3. Enter the Project Name as it appears on the Contract/Solicitation documents;
4. Enter the Contract Type, i.e., Construction, Design, Construction Management, etc.;
5. Contract Award Amount;
6. Enter the value of the Contract Award Amount multiplied by DBE Goal Percentage;
7. 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;
8. Name & Address of DBE: Enter the DBE Name and Address;
9. 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;
10. 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;
11. % 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;
12. Totals: Enter the total of the "Estimated Dollar Value of DBE Participation" and "% of DBE Participation" columns;
13. Prime Contractor Name and the Authorized Representative's name; and
14. Signature and date of the Authorized Representative

To be granted "FINAL APPROVAL", prime contractor submits a copy of the DDOT DBE Certification Letter, DBE Quote to the Contractor and/or the Letter of Intent for all DBE's listed on the DBE Plan within 60 days from Award Date. The DBE Utilization Plan will be signed by DDOT OCR's Federal Compliance Officer or an assigned designee supervised by DDOT's Chief of the Office of Civil Rights.

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](mailto:Mohammed.Kabir@dc.gov).

### **Modification of DBE Utilization Plan**

Any modifications to the DBEs performing on a federal-aid contract must be approved by OCR before the DBE reports to the worksite. The following process must be followed:

1. The prime contractor must complete and submit the DDOT DBE Utilization form BEFORE the DBE commence work. After written submission, the contractor shall follow up with a telephone

call to OCR and written justification as to the purpose of the modification. The modified DBE Utilization Form shall be submitted either via email or mailed to:

**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](mailto:Mohammed.Kabir@dc.gov)

2. The proposed modified DBE Utilization plan shall be reviewed and approved/denied keeping within the requirements set forth in 49 CFR 26.53;
3. The responsibility is on the prime contractor to get approval from OCR regarding DBE firms. If the prime contractor has not received written approval, no credit will be credited for DBE participation;
4. The process for completing the modified DBE Utilization Form is as follows:
  - a. Check Modified DBE Plan on the DBE Utilization Form;
  - b. Enter the Project Number or Solicitation Number;
  - c. Enter the DBE Goal noted in the Contract/Solicitation documents;
  - d. Enter the Project Name as it appears on the Contract/Solicitation documents;
  - e. Enter the Contract Type, i.e., Construction, Design, Construction Management, etc.;
  - f. Contract Award Amount;
  - g. Enter the value of the Contract Award Amount multiplied by DBE Goal Percentage
  - h. 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;
  - i. Name & Address of Modified DBE firm: Enter the DBE Name and Address;
  - j. Description of Work to be completed by the modified 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;
  - k. Estimated Dollar Value of Modified 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;
  - l. Percent of Modified DBE Participation: Divide the Contract Value noted on the Letter of Intent by the Contract Value awarded by DDOT to determine the Percent of Modified DBE participation for each DBE listed;
  - m. Totals: Enter the total of the "Estimated Dollar Value of DBE Participation" and "Percent of DBE Participation" columns;
  - n. Prime Contractor Name and the Authorized Representative's name; and
  - o. Signature and date of the Authorized Representative.

To be granted "FINAL APPROVAL", prime contractor submits a copy of the modified DBE firm's Certification Letter, DBE Quote to the Contractor and the Letter of Intent for all DBEs listed on the modified seven (7) business days prior to the DBE firm's expected time of performance. The modified DBE Utilization Plan will be signed by DDOT OCR's Federal Compliance Officer or an assigned designee supervised by DDOT's Chief of the Office of Civil Rights.

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](mailto:Mohammed.Kabir@dc.gov).

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

A prime contractor shall not terminate for convenience a DBE contractor listed in response to 49 CFR Part 26.53(b)(2) and subsequently perform the work of the terminated contract with its own workforce or those of an affiliate, without prior written consent. DDOT requires the prime contractor to notify the DBE with a copy sent to DDOT's DBELO and the Senior Equal Opportunity Local and Federal Compliance Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In addition to the prime contractor notification, DDOT requires written confirmation from the DBE firm that they are unable to perform on the contract and the relationship is severed. The DBE has five (5) days to respond to the prime contractors' notice. OCR will conduct its due diligence to ensure that the separation is mutual or determine if the DBE firm is in need of supportive services that will enable the firm to continue on the project.

DDOT will require the prime contractor to make good faith efforts to replace a DBE that is terminated, or otherwise fails to complete its work on the contract for any reason with another certified DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contracts as the DBE that was terminated, to the extent needed to meet the contract goal that was established for the procurement. If, after all due diligence is conducted including receipt of written notification by the DBE firm, OCR 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.

### **Good Cause for Termination/Substitution of DBE Firm: 26.53(f-g)(3i-3x)**

DDOT does not take the termination and/or substitution of a DBE firm lightly. In determining good cause for termination and subsequent substitution of a DBE firm on a DOT-assisted project, the following criteria must be met:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. 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;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. 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;
6. DDOT-OCR has determined that the listed DBE subcontractor is not a responsible contractor;
7. The listed DBE subcontractor voluntarily withdraws from the project and provides to DDOT-OCR written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract; and

10. Other documented good cause that DDOT-OCR determines 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.

Before transmitting to DDOT OCR 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 DDOT OCR, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise DDOT-OCR and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why DDOT OCR should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), DDOT OCR may provide a response period shorter than five days.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, DDOT-OCR 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 DDOT-OCR established for the procurement. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within **7 days**, which may be extended for **an additional 7 days** if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

DDOT will include in each prime contract the contract clause required by §26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section DDOT deems appropriate if the prime contractor fails to comply with the requirements of this section.

The requirement of this provision does not exclude DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, DDOT-OCR **counts** 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.

DDOT require the prime contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

In the event of the contractor's non-compliance with non-discrimination provisions of this contract, DDOT shall impose such contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including but not limited to:

- a. Withholding of payments to the contractor under the contract until the contractor complies, and/or
- b. Cancellation, termination, or suspension of the contract, in whole or in part.

Specifically, if the contractor fails or refuses to comply in the time specified, DDOT's contracting officer will issue a stop order of 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.

### **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 the District Department of Transportation (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 6), 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
6. 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.

### **DBE Approval**

1. Every DBE proposed for use on a contract towards meeting a DBE goal, requires approval by DDOT's Office of Civil Rights (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.
2. Upon closing of the bids, DDOT's Office of Contract and Procurement (OCP) will notify OCR of the pending responsive bidder.
3. Within five (5) working days subsequent to bid opening, DDOT requires the bidder/offeror to a complete DBE plan utilizing the DBE Utilization Form (See Attachment 3) containing a list of DBE firms to be utilized on this project or documentation demonstrating good faith efforts to meet the goal on this project. The DBE plan must be submitted to:

District Department of Transportation  
Office of Contracting and Procurement

55 M Street S.E. 7th Floor  
Washington, DC 20003

4. OCR requires a letter of intent signed from both DBE firm and the prime contractor for review and consideration. Upon OCR's receipt of the DBE Utilization Form, the Federal Compliance Officer reviews and verifies the DBE firm(s) to DDOT's and WMATA's DBE Directories to ensure that the DBE firm(s) are certified under the MWUCP and have the proper NAICS codes for the scope of work to be performed.
5. The plan is approved with an affixed signature by the Federal Compliance Officer or the DBELO or a DDOT OCR designated staff.

### **Change Orders/Task Orders**

The prime contractor is responsible for the DBE goal. Change orders/task orders and modifications that eliminate work that was intended for the DBE subcontractor does not absolve the prime contractor's responsibility under 49 CFR part 26 to meet the DBE goal.

### **Section 26.55 Counting DBE Participation**

DDOT will count DBE participation toward overall and contract goals.

Pursuant to 49 CFR Part 26.55, DBE participation is credited using the following procedures. For construction contracts, refer also to the current The District Department of Transportation (DDOT) Standard Specifications. <http://ddot.dc.gov/page/standard-specifications-highways-and-structures>

1. When a DBE participates in a contract, DDOT counts only the value of the work actually performed by the DBE toward DBE goals. Below are the required DBE participation criteria that are allowed for counting purposes:
  - a. 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);
  - b. 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 DDOT-OCR determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services; and
  - c. 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.

## Joint Ventures

2. 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.

## Commercial Useful Function (CUF)

3. Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

49 CFR §26.55 defines when a DBE is performing a commercial 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.

Determinations of CUF are defined in accordance with 49 CFR §26.55 as follows:

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, DDOT-OCR 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, DDOT-OCR 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, DDOT-OCR must presume that it is not performing a commercially useful function.
  - a. 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. DDOT-OCR may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
  - b. DDOT's decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

## Trucking Participation 26.55(d)

In accordance with 26.55(d), DDOT uses 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 an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
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.

### **Materials and Supplies 26.55(e)(1-3)**

1. DDOT counts expenditures for materials and supplies towards DBE goals as provided in the following:
  - a. 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; and
  - b. 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. The OCR staff will review the DBE firms' NAICS Codes as certified through the MWUCP and, if applicable, with the DBE firms' home state certifying agency.
  - a. 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; and
  - b. 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:

- i. 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.
  - ii. 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.
  - iii. 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 DDOT-OCR determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. DDOT will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
4. DDOT will determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expeditor) on a contract-by-contract basis.
  - a. Section 26.55 (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, DDOT will not count the firm's participation toward any DBE goals, except as provided for in §26.87(i);
  - b. Section 26.55(g) DDOT will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward DDOT-OCR overall goal; and
  - c. Section 26.55(h) DDOT will 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.

### **Commercial Useful Function Reviews**

1. The contractor is responsible for ensuring that DBEs working on the project perform a commercially useful function (CUF). The contractor shall receive credit toward meeting the assigned DBE goal and payment for DBE commercially useful function performed work only.
2. OCR conducts CUF Reviews on its DOT-assisted projects. The purpose of the CUF review is to determine compliance with the Commercially Useful Function (CUF) requirements of 49 CFR Part 26.55. 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.
3. The CUF review/audit will be performed by DDOT OCR staff, its designee, DDOT project engineer, or by the project construction management team. CUF reviews will be performed on a routine basis and, under the following circumstances: whenever there is any indication that a DBE may not be performing a CUF; whenever a DBE performs work which varies from the bid

items indicated in the contractor's commitment forms; whenever a change in the performance of the DBE occurs; whenever a substitution of work or a change order occurs which affects the work to be accomplished by a DBE; and whenever a replacement or substitution of a DBE occurs.

### **CUF Process**

1. In consultation with the project engineer/project management team, the staff or designee responsible for conducting the CUF reviews the following in determining whether or not the DBE is performing a commercial useful function.

### **Management**

- a. Is the DBE scheduling work operations?
- b. Is the DBE ordering equipment and supplies?
- c. Is the DBE preparing and submitting certified payroll forms?
- d. Is the DBE responsible for hiring and firing employees?
- e. Are the DBE firm's lease agreements available for inspection to determine the term and conditions of lease, and charges if applicable?

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

### **Workforce**

1. Are employees moving between the DBE and the prime contractor?
2. Are employees listed on the DBE and prime contractor's payroll?
3. Does the DBE share office space with the prime contractor?
4. 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

5. Are certified payrolls available for inspection to determine consistency with resources employed for same time period in the project engineer's journal/diary?

### **Equipment**

1. Who is the owner of the equipment?
2. Observe equipment and assess signage. Is there a sign over an original sign?
3. Who is operating the equipment? Is the operator an employee of the DBE?
4. 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**

1. Did the DBE order its own materials?
2. Are invoices for materials and supplies addressed to the DBE?
3. Who paid for the materials? Is payment made by a joint check, bearing the DBE and prime contractor's signatures?
4. Are delivery slips to available for inspection to determine the origin, addressee, quantities and firm making the delivery?

5. Are material invoices available for inspection to determine charges and intended payee and provide indication of firm that order supplies, materials or services?

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

### **Performance**

1. Does the DBE have a contract with the prime contractor?
2. Does the DBE firms' contract contain DDOT's DBE contract provisions and requirements pertinent to termination, substitution, administrative remedies and other key matters?
3. Has the DBE performed 30% of the overall contract?
4. Is a portion of the DBE's work performed by the prime contractor or any other companies?
5. Are the DBE subcontractors' contracts consistent with the commitment documents?
6. Is the performance of the DBE firm recorded in the Project Engineer's journals or diaries and specifies the list equipment, personnel employed and type of item or work performed on the project?
7. Are records of payments (i.e., cancelled checks, bank records, etc.) – determine actual payer?

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.

### **CUF Review Forms - Further Details the CUF Review Process and Forms**

When a DBE is initially determined not to be performing a CUF as defined above, the DBE may present evidence to rebut this determination. DDOT OCR will determine if the firm is performing a CUF given the type of work involved and normal industry practices.

Decisions on CUF matters are subject to review by the concerned operating administration () but are not appealable to USDOT

After the CUF review, the DDOT DBELO and/or the Federal Compliance Officer will certify that the CUF review has been conducted.

### **Joint Checks**

A joint check is defined as a check that has been issued by a prime contractor to a DBE subcontractor and to a material supplier or another third party for items or services to be incorporated into a project. While the text of the DBE rules does not mention the use of joint checks, DDOT-OCR realizes that in accordance with industry practice, there may be times when the use of a joint checks is appropriate. While DBE regulation does not prohibit the use of joint checks, it should be noted that joint check arrangements must be approved by the DDOT-OCR prior to such arrangement.

In consideration for approving the use of joint checks, DDOT-OCR reviews the request through the lens of three (3) criteria based on the DBE regulations:

1. The DBE firms' independence (26.71)(b);
2. Whether the firm is performing a commercially useful function (26.55(c)(1)); and

3. The DBE firms' status as a dealer or a broker which determines the counting of materials and supplies and whether or not the DBE will be responsible for the installation of the materials and supplies or the prime contractor of another third party (26.55(e)(3)).

### **Joint Check Approval Process**

1. Prime contractors and DBEs wishing to use joint check arrangements must submit a request in writing prior to starting work;
2. Prior approval must be obtained from DDOT Office of Civil Rights;
3. Forward the Joint Check request to the Office of Civil Rights using the Joint Check Arrangement Monitoring Form See sample DBE Joint Check Request form in Attachment 3;and
4. This request must include the following:
  - a. The actual document requesting the arrangement, i.e., the original request presented from the DBE vendor, or DBE.
  - b. The Joint Check Arrangement Monitoring form (should be completed and maintained throughout the joint check arrangement. Please be advised of the following:
    - i. 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.
    - ii. 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).
    - iii. 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.
    - iv. 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.
    - v. 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 to terminate the arrangement should be consistent: for example, if the prime contractor has the right to terminate the arrangement unilaterally, a DBE subcontractor shall have the same right.
    - vi. 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.

## **Counting DBE Credit in Joint Check Situations**

### **Regulatory Guidance regarding Counting DBE Credit in Joint Check Situations**

The DOT has provided guidance regarding counting DBE Credit in Joint Check situations:

1. To receive DBE credit for performing a commercially useful function with respect to obtaining materials and supplies, a DBE must “be responsible for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself” (emphasis added; 49 CFR 26.55(c)(1)). Only when a DBE meets all requirements of this provision should DBE credit be counted for the procurement of items by the DBE.
2. By paying for the material itself, the regulation means that the DBE’s own funds are used to pay for the material. As the preamble passage quoted above notes, it is not appropriate for the funds to come “from the other party” (e.g., the prime contractor). The use of joint checks can raise the question of whether the DBE’s own funds, as distinct from those of the prime contractor, are really being used to pay for the material.
3. To answer this question, a prime contractor and DBE should provide documentation to the recipient showing that the funds used to pay a supplier in fact came from the DBE’s own funds. Accounts receivable to the DBE from the prime contractor for the costs of items procured by the DBE from the supplier generally may be regarded as representing the DBE’s own funds. If a DBE which has received a joint check from the prime contractor documents that it has been in control of the funds provided in the check and has determined when the supplier or other third party has fulfilled its responsibilities under the contract, the recipient may conclude, absent evidence to the contrary, that the DBE is paying the third party with its own funds. The recipient should review this documentation before deciding whether to give DBE credit for the items in question.
4. As part of the recipient’s oversight of contracts on which joint checks are used, it is important to determine whether the requirements of 26.55(c) (1) other than payment from the DBE’s own funds are being met. If the other requirements of 26.55(c)(1) are not met, then it is not appropriate to award DBE credit for the use of the items in question.
5. Insistence by a prime contractor that a DBE must use a particular supplier or pay a specific price for an item is likely to be inconsistent with these requirements.
6. If there is a significant disparity with respect to quantity or cost of items a DBE procures using a joint check arrangement, compared to the size of the contract and the expected ability of the DBE to obtain the items, the recipient should look carefully to ensure that commercially useful function requirements for counting DBE credit are being met.
7. A DBE obtaining items for a construction contract normally should install them as well. If the DBE obtains the items but the prime contractor or another party installs them, the DBE credit awarded may be limited to the fee or commission obtained by the DBE (see 26.55(e)(3)).

## **DBE Independence in Joint Check Situations**

Regarding DBE Independence in Joint Check situations, DBE regulatory guidance provides the following for review and consideration during the approval process:

1. In answering questions about independence, recipients should determine whether or not there is a pattern of close, pervasive ties between a DBE and other firms. If it appears that, absent its ties to a prime contractor, a DBE firm is not viable; it should not be regarded as independent.
2. Ties between DBEs and other firms that may be legitimate aspects of a business relationship, considered individually, can form part of a pattern of pervasive ties that compromises the independence of a DBE firm. Joint checks are one of the ties between DBEs and other firms that recipients should examine in determining whether such a pattern exists.

To obtain additional information on DBE Compliance, please contact:

**Mohammed Kabir, PHR**

Senior 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](mailto:Mohammed.Kabir@dc.gov).

**Good Faith Efforts**

1. 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.
  - 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 force.
  - 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.
    - i. 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.

- ii. 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.

## **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. We 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:

#### **Leutisha Stills, Equal Opportunity/DBE Program Specialist**

DDOT Office of Civil Rights

55 M Street, S.E., 3rd Floor

Washington, D.C. 20003

(202) 671-0479

[Leutisha.Stills@dc.gov](mailto:Leutisha.Stills@dc.gov)

#### **Catherine Svoboda, DBE & Compliance Specialist**

WMATA - DBE  
600 Fifth Street, NW, 3C  
Washington, DC 20001  
202-962-1854  
[csvoboda@wmata.com](mailto:csvoboda@wmata.com)  
[http://www.wmata.com/business/disadvantaged\\_business\\_enterprise/dbe\\_search.cfm](http://www.wmata.com/business/disadvantaged_business_enterprise/dbe_search.cfm)

Our certification application forms and documentation requirements are found in Attachment 9 to this program.

## **SUBPART E – Certification Procedures**

### **Section 26.81 Unified Certification Programs**

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 follow all certification procedures; cooperates fully with oversight, review, and monitoring activities of the USDOT and its operating administrations. The UCP also implements USDOT directives and guidance concerning certification matters. The MWUCP agreement includes an implementation schedule to ensure that the MWUCP is fully operational.

Effective January 1, 2012, the MWUCP certifying members will process out-of-state applications in accordance with Section 26.85 (c) & (d).

### **Section 26.83 Procedures for Certification Decisions**

#### **Certification Review 26.83 (a) & (c)**

DDOT reviews the eligibility of DBEs certified under former Part 23, to make sure that they will meet the standards of Subpart E of Part 26. DDOT completes this review no later than three years from the most recent certification date of each firm. The following is DDOT's certification review process:

1. Firms will be notified by their initial certification anniversary date via email and certified letter from DDOT/WMATA certification specialists 90 days prior to their 3-year review date;
2. 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:
  - a. An on-site visit to the offices of the firm.
  - b. If the firm is a corporation, analyze the ownership of stock in the firm;
  - c. Analyze the bonding and financial capacity of the firm;
  - d. Determine the work history of the firm, including contracts it has received and work it has completed;
  - e. 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;

- f. 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)**

DDOT requires that all DBEs to inform the agency 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.

DDOT also requires all owners of all DBEs that have been 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.

DDOT requires DBEs to submit with this affidavit documentation of the firm's size and gross receipts. DDOT 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.

The Change/No Change Affidavit Forms are available on DDOT's Office of Civil Rights DBE website under related documents (<http://ddot.dc.gov/node/540802>). It is also included in their initial certification welcome package and a reminder is included in the initial certification letter. The form has to be notarized and mailed to:

**METROPOLITAN WASHINGTON UNIFIED CERTIFICATION PROGRAM  
DISADVANTAGED BUSINESS ENTERPRISE (DBE)  
OFFICE OF CIVIL RIGHTS  
55 M Street S.E. 3rd Floor  
Washington, DC 20003  
Attention: Luisa Nguyen**

### **Notices of Change**

If a certified DBE experiences a change in ownership affecting the 51 percent majority ownership and control of the firm by the disadvantaged owners on record with the Department, the DBE must submit a notice of this change to the Department. If the DBE fails to timely file this notice of change, the Department shall commence removal proceedings pursuant to 49 CFR Part 26.87.

A DBE shall also timely notify DDOT of any change in address, telephone number, contact person for the firm, change in the firm's officers, or change in the firm's name so that the DDOT may properly update this information for its DBE Directory.

Failures to submit the required documents, annual change/no change affidavits or three year review documents may cause DDOT to begin the de-certification process. DDOT OCR will send three (3) email correspondence, telephone calls and certified letters to the DBE owner requesting a response with a specified time period. The first letter of notice will indicate a 30-day grace period; second letter of notice will provide a 15-day grace period; and the final letter of notice will provide a 7-day grace period. If the DBE firms fail to respond, DDOT OCR will submit a recommendation to the MWUCP Committee for de-certification. Once the MWUCP Committee approves the de-certification process, a letter of notice will be provided to the firm with a time and date to appear in meeting with members of the MWUCP Committee. The purpose of the meeting is to afford the DBE firm an opportunity to justify their non-responsiveness and to determine their willingness to participate in the DBE program.

If the outcome of the meeting is unsatisfactory to the DBE firm, they are encouraged to appeal to the U.S. Department of Transportation's DBE Appeals Office.

### **Section 26.85 Interstate Certification**

The MWUCP, the official certification agency for the District of Columbia and WMATA, chooses to review all out-of-state applicants as provided in 49 CFR 26.85(c). The following applies with respect to any firm that is currently certified in its home state as a Disadvantaged Business Enterprise (DBE) and wishes to apply for certification as a DBE with the Washington Metropolitan Uniform Certification Program (MWUCP).

In order to apply for DBE certification, out-of-state DBE firms must provide the following documents as required in 49 CFR 26.85 (c):

1. A complete copy of the Uniform Certification Application form, all supporting documents, and any other information you have submitted to your Home state or any other state related to your firm's certification.
2. Submit copies of any notices or correspondence from states other than your home state relating to your status as an applicant or certified DBE in those states.
3. If you have filed a certification appeal with DOT, you must provide this information including your letter of appeal and DOT's response.
4. 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. This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85 (c).
5. If your on-site report from your home state supporting your certification in your home state is more than three years old, as of your application to DDOT, DDOT may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

To retrieve these documents you can visit: [dbe.ddot.dc.gov](http://dbe.ddot.dc.gov)

Submit the complete application package to:

District Department of Transportation  
Office of Civil Rights  
55 M Street, SE, 3rd Floor  
Washington, DC 20003  
**Attention: Leutisha Stills**  
Telephone: (202) 671-0479  
[Leutisha.Stills@dc.gov](mailto:Leutisha.Stills@dc.gov)

#### **Interstate Certification Process: 26.85(d)**

As State B, when DDOT-OCR receives from an applicant firm all the information required by paragraph (c) of this section, we 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:
  - a. Evidence that State A's certification was obtained by fraud;
  - b. New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;
  - c. State A's certification was factually erroneous or was inconsistent with the requirements of this part;
  - d. The State law of State B requires a result different from that of the State law of State A.
  - e. The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.
3. If, as State B, unless DDOT-OCR have determined that there is good cause to believe that State A's certification is erroneous or should not apply in the MWUCP, DDOT-OCR must, no later than 60 days from the date on which the agency 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, DDOT-OCR determines that there is good cause to believe that State A's certification is erroneous or should not apply in the MWUCP, DDOT-OCR 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.
  - a. This notice must state with particularity the specific reasons why DDOT-OCR 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 DDOT-OCR with respect to these reasons.
  - b. The firm may elect to respond in writing, to request an in-person meeting with DDOT-OCR's decision maker to discuss DDOT-OCR's objections to the firm's eligibility, or

- both. If the firm requests a meeting, as State B, DDOT-OCR must 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 DDOT-OCR's notice. The firm is not otherwise responsible for further demonstrating its eligibility to DDOT-OCR.
  - d. The decision maker for DDOT-OCRF must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.
  - e. DDOT-OCR 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.
  - 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 s§ [26.89](#) of this part.

### **Section 26.85(e)**

If DDOT-OCR has 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, DDOT 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, DDOT-OCR 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.

### **Section 26.85(f)**

1. When as a UCP, when DDOT-OCR denies 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's Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. DDOT must 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;
  - d. The reason for the action.
2. As a UCP, DDOT will check the DOCR Web site at least once every month to determine whether any firm that is applying for certification or that is currently already certified is on the list.
3. For any such firm that is on the list, DDOT-OCR will promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, DDOT-OCR will provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, DDOT-OCR will 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 26.86 Denials of Initial Requests for Certification**

If DDOT-OCR denies a firm's application or chooses to decertify a firm, the firm may not reapply until one (1) year has passed from our action.

1. When DDOT denies a request by a firm, which is not currently certified with DDOT, to be certified as a DBE, DDOT 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.
2. When a firm is denied certification, DDOT must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. DDOT may provide, in the 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.
3. When DDOT makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under §26.89.

### **Section 26.87 Removal of a DBE's Eligibility**

In the event DDOT propose to remove a DBE's certification, DDOT will follow procedures consistent with 26.87. **Attachment 8** to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, DDOT has 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. DDOT has 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 DDOT's decision in a certification matter to USDOT. Such appeals may be sent to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
External Civil Rights Programs Division (S-33)  
1200 New Jersey Ave., S.E.  
Washington, DC 20590  
Phone: (202) 366-4754  
TTY: (202) 366-9696  
Fax: (202) 366-5575

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

## **SUBPART F – Compliance and Enforcement**

### **Section 26.101 Compliance Procedures**

In accordance with 49 CFR Part 26, DDOT and/or any sub-recipients may be subject to compliance actions or sanctions for failing to carry out any requirement of this part. Section

### **Section 26.103 Enforcement Actions in FHWA and FTA Programs**

FHWA and FTA may review DDOT's and/or any sub-recipient's compliance with the requirements of 49 CFR Part 26 at any time. Any person who believes that DDOT has failed to comply with its obligations under this part may file a written complaint to FHWA's or FTA's Office of Civil Rights. Such a complaint must be filed within 180 days after the date of the alleged violation.

### **Section 26.105 Enforcement Actions in FAA Programs**

Compliance with all requirements of this part by airport sponsors and recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code. FAA may review compliance with 49 CFR Part 26 at any time, as appropriate. Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint with the FAA Office of Chief Counsel.

### **Section 26.107 Enforcement Actions Applicable to Firms Participating in the DBE Program**

DDOT is required to take legal action against any firm misuses the intent of the DBE program for illegal purposes. The following are, but not limited to, the enforcement tools that DDOT may use to insure the honesty and integrity of the DBE Program:

1. If a firm that does not meet the eligibility criteria of subpart D of this part 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 DDOT may initiate suspension or debarment proceedings against a firm under 2 CFR parts 180 and 1200.
2. If 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 DDOT may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.
3. In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the DC Division FHWA may consider the fact that a purported DBE has been certified by a the MWUCP. Such certification does not preclude the DDOT 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.
4. DDOT 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) DDOT-OCR 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.

### **Section 26.109 Information, Confidentiality, Cooperation, and Intimidation or Retaliation**

DDOT will safeguard from disclose to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law.

1. *Availability of records.*

- a. In responding to requests for information concerning any aspect of the DBE program, DDOT complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). DDOT may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.
- b. Notwithstanding any provision of Federal or state law, DDOT is prohibited from releasing 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, DDOT will 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.

2. ***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.

3. ***Cooperation.***

All participants in the DDOT'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).

4. ***Intimidation and retaliation.***

DDOT, its contractor, or any other participant in the program, 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. Violation of this prohibition will result in noncompliance with this part.

## **FREEDOM OF INFORMATION ACT REQUESTS**

The District of Columbia Freedom of Information Act,(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.

Karen R. Calmeise, Esq., Hearings/FOIA Officer  
Office of the General Counsel  
District Department of Transportation  
55 M Street, S.E. Suite 700  
Washington, D.C. 20003  
karen.calmeise@dc.gov  
(202) 671-5114 (desk)

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.

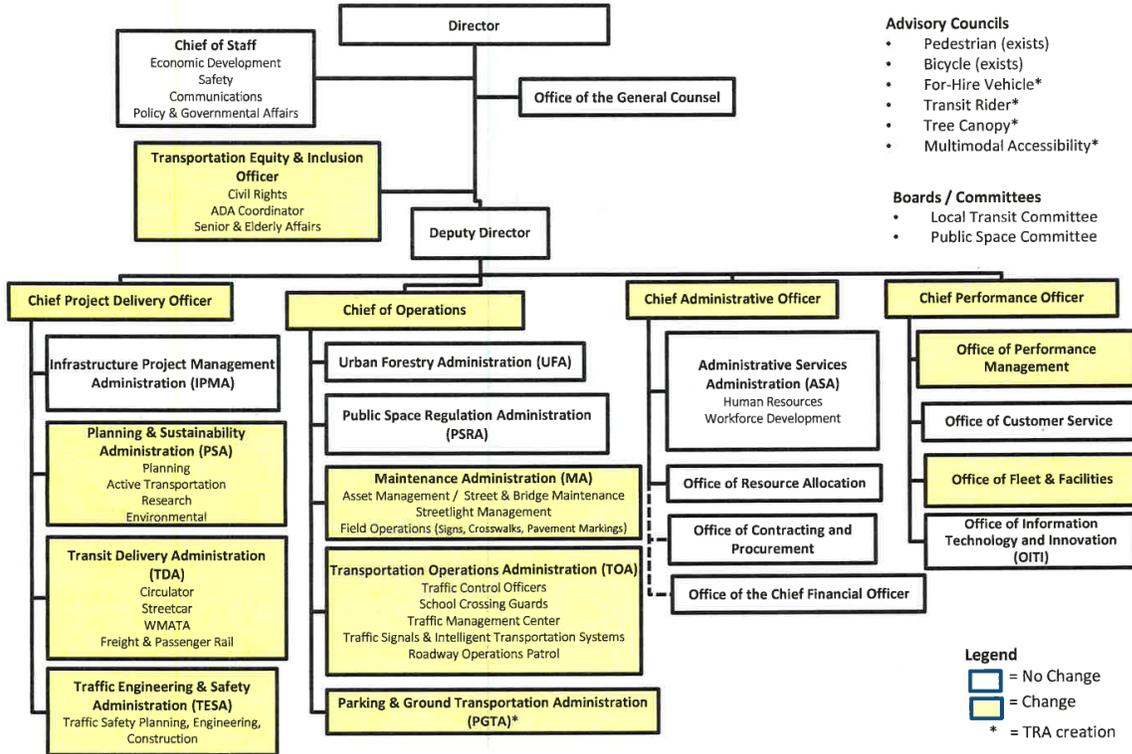
## ATTACHMENTS

Attachment 1	Organizational Chart
Attachment 2	DBE Directory
Attachment 3	Monitoring and Enforcement Mechanisms
Attachment 4	DDOT DBE Contractor Payment Form
Attachment 5	Overall Goal Calculations for FHWA/FTA
Attachment 6	Contract Goal Worksheet
Attachment 7	Breakout of Estimated Race-Neutral & Race-Conscious Participation
Attachment 8	Form 1 & 2 for Demonstration of Good Faith Efforts
Attachment 9	Procedures for Removal of DBE's Eligibility
Attachment 10	Certification Application Forms
Attachment 11	Regulations: 49 CFR Part 26
Attachment 12	Regulations: 13 CFR Part 121

# **Attachment 1**

## **Organizational Chart**

# DRAFT District Department of Transportation (DDOT) Reorganization Chart



DRAFT – September 30, 2015

# **Attachment 2**

## **DBE Directory**

## **Section 26.31 Directory**

The District Department of Transportation (DDOT) maintains a DBE directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. Certified with District Department of Transportation and Washington Metropolitan Area Transit Authority. Our DBE Directory is updated daily. The Directory can be accessed through DDOT's website below:

<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 Nguyen, 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](mailto:Luisa.Portillo@dc.gov)

***Catherine Svoboda, DBE & Compliance Specialist***

WMATA - DBE

600 Fifth Street, NW, 3C

Washington, DC 20001

202-962-1854

[csvoboda@wmata.com](mailto:csvoboda@wmata.com)

[http://www.wmata.com/business/disadvantaged\\_business\\_enterprise/dbe\\_search.cfm](http://www.wmata.com/business/disadvantaged_business_enterprise/dbe_search.cfm)

**Attachment 3**

**Monitoring and Enforcement Mechanisms**

**Forms A, B, C, D**

## Section 26.37 Monitoring and Enforcement Mechanisms

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

11. 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.
12. DDOT will consider similar action under our own legal authorities, including responsibility determinations in future contracts. The regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
  - a. 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:

- i. Suspension or debarment proceedings pursuant to 49 CFR, Part 26
  - ii. Enforcement action pursuant to 49 FR Part 31
  - iii. Prosecution pursuant to 18 USC 1001
13. DDOT provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This is accomplished by a multi-level process. First, the DBE Compliance Officer meets with and educate the project engineer and project management team as to which DBEs are expected to work on each project; what tasks are expected to be completed, and for what sum of money. The Federal DBE Compliance Officer or its designee 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 OCR. Additionally, OCR will maintain regular communication with the DBE contractor and sub-contractor to inquire about work actually completed, and anticipated to be completed.
14. DDOT maintains 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.
15. DDOT will provide written certification that it has reviewed records and monitored work sites to ensure work committed to DBEs is actually performed by DBEs to which the work was committed.

## **§26.107 Enforcement Actions Applicable to Firms Participating in the DBE Program**

DDOT is required to take legal action against any firm misuses the intent of the DBE program for illegal purposes. The following are, but not limited to, the enforcement tools that DDOT may use to insure the honesty and integrity of the DBE Program:

(a) If a firm that does not meet the eligibility criteria of subpart D of this part 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 DDOT may initiate suspension or debarment proceedings against a firm under 2 CFR parts 180 and 1200.

(b) If 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 DDOT 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 DC Division FHWA may consider the fact that a purported DBE has been certified by a the MWUCP. Such certification does not preclude the DDOT 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) DDOT 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) DDOT-OCR 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.

### **PROMPT PAYMENT/DBE CONTRACT COMPLIANCE SYSTEM**

**Prompt Payment:** The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than *no later than 7 days* from the receipt of each payment the prime contract receives from The District Department of Transportation (DDOT) .The prime contractor agrees further to return retainage payments to each subcontractor within *no later than 7 days* after the subcontractors work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the DDOT. This clause applies to both “DBE and non-DBE subcontracts.” *Failure to do so shall be grounds for appropriate action against the party involved (e.g.: findings of non-responsibility for future contracts and/or suspension and debarment).*

**DBE Contract Compliance System:** This contract is subject to contract compliance tracking, and the prime contractor and any subcontractors are required to provide any noted and/or requested contract compliance-related data electronically in the [Contract Compliance System](#). The prime contractor and all subcontractors are responsible for responding by any noted response date or due date to any instructions or request for information, and to check the [Contract Compliance System](#) on a regular basis to manage contact information and contract records. The prime contractor is responsible for ensuring all

subcontractors have completed all requested items and that their contact information is accurate and up-to-date. District DOT's Office of Civil Rights may require additional information related to the contract to be provided electronically through the system at any time before, during, or after contract award.

Information related to contractor access of the system will be provided to a designated point of contact with each contractor upon award of the contract. The [Contract Compliance System](#) is web-based and can be accessed at the following Internet address: <https://ddot.dbesystem.com>

**The Prime must upload and report the following items:**

- Prime must report all payments to DBE firms and all subcontractors to the [Contract Compliance System](#) by the 15<sup>th</sup> of the month for the previous month activity under this project. All payment must be reported on the [Contract Compliance System](#) monthly even if no activity for a month.
- Upload all signed agreements between the Prime and DBE firms well as the non-DBE subcontracts on the [Contract Compliance System](#).
- Copies of all cancelled check payments to DBE firms should be forwarded to the Office of Civil Rights [Mohammed.Kabir@dc.gov](mailto:Mohammed.Kabir@dc.gov) by the 15th of the month for the previous month activity. A form **MUST** be completed monthly even if no activity for a month. *Failure to do so shall be grounds for appropriate action against the party involved (e.g.: findings of non-responsibility for future contracts and/or suspension and debarment).*

This online system allows vendors to actively support our efforts to achieve diversity participation, maintain accurate contact information, and report subcontractor payment details. As a Prime Vendor, you are required to log in to review and update certain specific information regarding payments to your subcontractors, and all contact information (name, address, phone, fax, email) for your firm and the subcontractors. You can also identify who in your firm should be our main contact for each of your contracts. To begin, follow the steps below:

1. Visit <https://ddot.dbesystem.com>. Follow the on-screen directions to **look up your account** and then access the secure system. Contact Customer Support via any of the system links if you have any questions while attempting to access your account.
2. **Review and update all contact and contract information** as necessary for your firm and subcontractors.
3. **Ask your subcontractors to log in** to review and confirm amount reported for each time period.

Your firm **MUST** log into the system to review and update the required information **within 10 business days**. Please be advised that as the Prime Vendor, you are responsible for ensuring that all required information is entered, that it is accurate, and that your subcontractors verify payments received. Failure to cooperate with the Office of Civil Rights may result in breach of contract.

Each month from contract award until close out you are also required to log-in and report payment information. Payment information is reported by completing the pending **Contract Audits** which can be accessed from your Dashboard by clicking on "Contract Audits". For each monthly audit, click on "Incomplete" in the Status column and report the amounts paid to each subcontractor during the month. You will also report the amount paid to you as the prime for the time period.

Repeat these steps for any additional incomplete audits on this or additional contracts that are assigned to you in the system.

**You may also register for upcoming training sessions to learn more about system functionality, as well as classes that focus specifically on reporting payment to subcontractors.** To register, click on “Training Classes” under Help & Tools from any screen in the system and click RSVP next to the “Contract Compliance Reporting – Vendor Training.” You can also access the training classes without logging in here <https://cookcounty.diversitycompliance.com/events.asp> Additional information is available by clicking on the “Information for Vendors” link on the right-hand side of the home page under System Links.

There is no cost to Contractors for this service. You may add as many users to you your account as necessary to report and view contract compliance data (please do not share accounts between people). If you require technical assistance during the process, please use the online support form or email [DDOT@dbesystem.com](mailto:DDOT@dbesystem.com).

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, 3<sup>rd</sup> floor  
Washington, DC 20003  
(202) 299-2190  
[Mohammed.Kabir@dc.gov](mailto:Mohammed.Kabir@dc.gov)

On a case by case OCR will have CM and DDOT Project Manager do a prompt payment audits.

## Attachment 4

# DDOT **Subcontractor** Payment form

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF TRANSPORTATION**



**OFFICE OF CIVIL RIGHTS  
Subcontractor Payment Form**

<b>PRIME CONTRACTOR:</b>		<b>CONTRACT VALUE:</b>	
<b>PROJECT NAME:</b>		<b>CONTRACT NO:</b>	
<b>DBE GOAL:</b>	<b>TOTAL DBE CONTRACT AMOUNT:</b>		<b>TOTAL DBE PAYMENTS TO DATE:</b>
<b>NON-DBE SUBCONTRACTOR</b>	<b>TOTAL NON-DBE SUBCONTRACT AMOUNT:</b>		<b>TOTAL NON-DBE PAYMENTS TO DATE:</b>
<b>FOR MONTH OF (MO./YR.)</b>		<b>% PROJECT COMPLETE</b>	

<b>NAME OF SUBCONTRACTOR</b>	<b>SUBCONTRACT AMOUNT</b>	<b>DBE</b>	<b>WORK/SERVICE PERFORMED</b>	<b>TOTAL \$ PAID THIS PERIOD</b>	<b>TOTAL \$ PAID TO DATE</b>	<b>Joint Check</b>
	\$	No <input type="checkbox"/> Yes <input type="checkbox"/>		\$	\$	No <input type="checkbox"/> Yes <input type="checkbox"/>
	\$	No <input type="checkbox"/> Yes <input type="checkbox"/>		\$	\$	No <input type="checkbox"/> Yes <input type="checkbox"/>
	\$	No <input type="checkbox"/> Yes <input type="checkbox"/>		\$	\$	No <input type="checkbox"/> Yes <input type="checkbox"/>
	\$	No <input type="checkbox"/> Yes <input type="checkbox"/>		\$	\$	No <input type="checkbox"/> Yes <input type="checkbox"/>
	\$	No <input type="checkbox"/> Yes <input type="checkbox"/>		\$	\$	No <input type="checkbox"/> Yes <input type="checkbox"/>
	\$	No <input type="checkbox"/> Yes <input type="checkbox"/>		\$	\$	No <input type="checkbox"/> Yes <input type="checkbox"/>
<b>TOTALS</b>	\$			\$	\$	

Prime Contractor shall submit documentation regarding all payments made from the Prime to all Subcontractors on Federally Aided projects which validates said payments made. Credits towards the DBE goal can only be claimed after the amount being claimed toward the goal has been **paid** to the DBE. **Attach a copy of the cancelled checks.** **ALL** Joint Check Arrangements **MUST** be approved by the Office of Civil Rights. If Joint Check option is checked "Yes", DBE credit will not be applied if there is no **Approved** Joint Check Arrangement on file for the Subcontractor and the Vendor. This form must be completed and submitted monthly by the 15<sup>th</sup> 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** \_\_\_\_\_

GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF TRANSPORTATION



OFFICE OF CIVIL RIGHTS

Subcontractor Payment Form Instructions

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

**Prime Contractor:** Name of Prime 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.

**Non-DBE Contract Value:** Enter the Total Contract Value of all Non-DBE.

**Total Non-DBE Payments to Date:** Enter the total amount of payments made to ALL Non-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 Subcontractor:** Enter the DBE Name **DBE:** Indicate whether Non-DBE (No) or DBE (Yes)

**Subcontract Amount:** Enter the Contract Value awarded to the Subcontractor 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.

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

**Total \$ Paid to Date:** Enter the total paid to the Subcontractor to date (cumulative).

**Joint Check:** Indicate whether this check is a Joint Check between the Subcontractor and Vendor

**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 Subcontractor Payment Form and copies of Cancelled Checks: via E-Mail: [mohammed.kabir@dc.gov](mailto:mohammed.kabir@dc.gov). Scanned copies of the completed original Subcontractor Payment Forms and copies of Cancelled Checks are acceptable to fulfill this requirement.

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**

### COMMERCIALLY USEFUL FUNCTION

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

**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**

# **Attachment 5**

## **Overall Goal Calculations for FHWA/FTA**

# 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 2012 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>)

The local area market for DDOT is the Washington, DC Metropolitan Area, hereafter referred to as “Metro Area”. The Metro Area is defined by the U.S. Census Bureau Metropolitan Statistical Area as Washington-Alexandria-Arlington-DC-MD-VA-WV. This area includes the District of Columbia; the Virginia cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas and Manassas Park; the Virginia counties of Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford and Warren; the Maryland counties of Calvert, Charles, Prince George’s and Frederick; and the West Virginia County of Jefferson (<http://censtats.census.gov/cgi-bin/msanaic/msaset.pl>). It also includes the Bethesda, Rockville-Frederick Maryland Metropolitan Division which includes the counties of Frederick and Montgomery (<http://www.census.gov/population/metro/files/lists/2009/List1.txt>).

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.

Calculation:  $\frac{\text{Total number of DBE Firms}}{\text{Total number of Firms}} = \frac{258}{2383} = 0.1082 \times 100 = 10.82$  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
	<b>Total FTA Assisted Projects</b>	<b>\$19,301,348.00</b>

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
<b>Totals</b>	<b>228</b>	<b>2236</b>

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>) :

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

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

$$.5[20] + .5[228]$$

$$[157] \quad [2236] = .5[.127] + .5[.10]$$

$$= .063 + .005 = .0113 \times 100 = 1.13$$

**Thus, the base figure is 1%.**

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.

<b>NAICS Code</b>	<b>Project</b>	<b>Amount of DOT funds on project:</b>	<b>% of total DOT funds (weight)</b>
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
<b>Total FTA-Assisted Contract Funds</b>		<b>\$7,315,289.00</b>	<b>1</b>

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:

<b>NAICS Code</b>	<b>Project</b>	<b>Number of DBEs available to perform this work</b>	<b>Number of all firms available (including DBEs)</b>	<b>Relative Availability</b>	
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	
<b>Combined Totals</b>		<b>559</b>	<b>7748</b>	<b>0.0721</b>	<b>Overall availability of DBEs</b>

Utilizing 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.

Therefore, the rounded weighted based figure is 11.5%

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	DCAlt Anlys-Union Stn-GrgetwnWaterfrnt	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
<b>Total</b>					0.1148
Expressed as a % (*100)					11.48%
<b>Rounded, Weighted Base Figure:</b>					<b>11.5%</b>

**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:
  - i. Distribution of bi-weekly procurement and small business development training opportunities;
  - ii. Networking Events for small businesses to meet prime contractors;

- iii. Bi-monthly DDOT 101 For small businesses who are interested in doing business with the agency;
- iv. Small business development workshops such as marketing, bond financing, estimating and other business opportunity workshops.
- v. 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.

### **Public Participation – 2012-2014 DBE Goal Community Comments**

Consistent with the public participation requirements outlined in 49 CF Part 26§45(g)(1) and (2), a public notice was posted on the agency's website on June 20, 2013 which informed the public of the agency's proposed goals for FTA federal-aid projects for FY 2013-2015. The notice set forth the required period for receiving public comments via public meeting and written communication. The public notice can be viewed at:

<http://ddot.dc.gov/DC/DDOT/About+DDOT/News+Room/Public+Meetings/DDOT+Announces+FY+>

[2013-2015+DBE+Goals](#). Specifically, the notice informed the public of the 30-day public inspection period that was identified for the period of Monday, June 24, 2013 to August 5, 2013 and the public meeting date of Wednesday, July 2, 2013. Further, the notice provided the public notification of the 45 day comment period which ended on Monday, August 26, 2013.

In addition to the electronic notification, notice of the public participation was published in the following five (5) publications including minority-focused newspapers within the Washington region:

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

DDOT was unable to publish the notice in two (2) publications: (1) The Washington Examiner and (2) India Globe/Asia Today. At the time of publication, the Washington Examiner discontinued circulation. Regarding, India Globe/Asia Today, we could not get a confirmation from the company representatives in order to establish a publication notice due to a lack of communication from India Globe.

Lisa Gregory, Chief, Office of Civil Rights, was the key personnel identified to received written comments and questions from the public concerning this methodology.

### **Written Comments**

The OCR received written comments from Mr. Jessie Johnson of Stockbridge Consulting, a DDOT/Wmata Certified DBE firm. Mr. Johnson asked three (3) specific questions related to the FTA DBE goals: (1) how can he obtain the statistical data that validates the DBE goals; (2) When will DDOT begin supporting these new goals; and (3) what FTA does DDOT perform? Ms. Gregory informed Mr. Johnson that the agency is currently operating under the proposed goal of 11.5 percent for FTA projects. Further, she invited Mr. Johnson to attend the public meeting and if he was unavailable, we would provide him with a copy of the presentation. Finally, Ms. Gregory explained to Mr. Johnson that DDOT's FTA projects are administered by DDOT's Progressive Transportation Services Administration (PTSA) division and that historically have PTSA received far less funding from FTA annually. Ms. Gregory pointed out that for FY'13, the agency has only had one project, the Union Station to Georgetown Alternative Analysis.

Additionally, Mr. Johnson inquired as to DDOT's hiring strategies to help mitigate the high unemployment rate in impacted areas where this is a major concern. He provided DDOT with an example of the law firm of Baker, Manock and Jenson, P.C's legal analysis of Fresno, California's National Targeted Hiring Program that is designed to support workforce development efforts on the California High Speed Rail Project. Additionally, Mr. Johnson provided a copy of a white paper entitled, "***Facilitating Local Hiring on Transportation Projects: A Recommendation for the Surface Transportation Authorization***", prepared as a collaborative effort by Center for Community Change, Gamaliel Foundation, Green for All, Partnership for Working Families, PolicyLink, Transportation Equity Network, and Wider Opportunities for Women.

DDOT/OCR will review the information for further consideration.

## Public Meeting

The public meeting was held on July 2, 2013 from 2-4 pm at DDOT headquarters, 55 M Street, SE, Room 439, Washington, DC 20003. Sixteen (16) participants attended the meeting. The attendees represented a broad range of interested parties, including construction and A/E DBE firms and prime contractors.

Organization	Name
Anacostia Waterfront Initiative	Iberia Miles
BConstrux	Bernadette Harvey
Bree & Associates	Craig Stark
Bree & Associates	Robert Lancaster
Business Transformation Group	David Janifer
Capitol Management	Ben Moss
Cube Root Corporation	Omar Stephenson
DDOT/Office of Civil Rights	Mohammed Kabir
J-Dos Internationale	Janice Vieira
Justice & Sustainability Associates	Alexis Groggans
Legion Design/Campbell Associates	Endrea Frazier
Skanska	Dayvie Paschall
Smith & Sons, LLC	Mike Smith
Stockbridge Consulting	Jessie Johnson
Swann Construction	Rosanna Swann
The Temple Group	Mary K. White

Ms. Gregory and her staff presented the goal methodology to the audience. The discussion centered on a number of issues that impact DBE firms. Below is a summary of those issues that were discussed during the public meeting.

- 1) A question was raised regarding DDOT's establishing an FTA DBE goal and whether Washington Metropolitan Transit Authority's (WMATA)'s and DDOT's programs are the same. Ms. Gregory's response was no, that although WMATA receives FTA funding, the regional transportation agency establishes its DBE goal separate and apart from DDOT.
- 2) A question was raised regarding the funding source for the program management contract for the Streetcar Project. Ms. Gregory responded that the Streetcar Project is locally-funded ; however the agency anticipates at some time in the future, the project will secure FTA funds which will provide the legal mechanism to assign a DBE contract goal.

In summary, after the discussion of the FTA DBE goal methodology, the group accepted DDOT's recommendation of FTA DBE goal of 11.5%, of which 10% will be attained through race conscious measures and 1.5% will be attained through race neutral measures. DDOT/OCR is appreciative of the comments and will seek to implement the suggestions, in particular, the suggestion during the FHWA portion of the public meeting that DDOT establish a DBE Task Force during second quarter FY 2014. Based upon the comments, DDOT does not believe that any further adjustments are needed at this time.

## 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 11<sup>th</sup> 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.

## **ADDITIONAL OPPORTUNITIES/EVENTS**

The DDOT OCR and the DBE/SS Team engaged in several activities that were targeted towards the small business community at large. The following race/neutral activities are outlined below.

### **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.

### **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.

# 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 2013-2015 DBE goal of **18%** on Federal Highway Administration (FHWA) funded projects effective for a period of three (3) years: FY 2013-2015.

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

#### **Step 1 - Determination of Relative Availability of DBEs Contractors**

The first step in determining the relative availability of DBE Contractors is to identify DDOT's local market area. The local market area is defined by the U.S Department of Transportation's Office of Small and Disadvantaged Business Utilization's (OSDBU) website, "*Tips for Goal Setting in the Disadvantaged Business Enterprise Program*" (<http://osdbu.dot.gov/dbeprogram/tips.cfm>), as the area in which the substantial majority of the contractors and subcontractors with which DDOT do business are located and the area in which DDOT spends the substantial majority of its contracting dollars.

The local area market for DDOT is the Washington, DC Metropolitan Area, hereafter referred to as "Metro Area". The Metro Area is defined by the U.S. Census Bureau Metropolitan Statistical Area as Washington-Alexandria-Arlington-DC-MD-VA-WV. This area includes the District of Columbia; the Virginia cities of Alexandria, Fairfax, Falls Church, Fredericksburg, Manassas and Manassas Park; the Virginia counties of Arlington, Clarke, Fairfax, Fauquier, Loudoun, Prince William, Spotsylvania, Stafford and Warren; the Maryland counties of Calvert, Charles, Prince George's and Frederick; and the West Virginia County of Jefferson (<http://censtats.census.gov/cgi-bin/msanaic/msasect.pl>). It also includes the Bethesda, Rockville-Frederick Maryland Metropolitan Division which includes the counties of Frederick and Montgomery (<http://www.census.gov/population/metro/files/lists/2009/List1.txt>).

Data for this process was gathered by examining contract activity for the periods of FY 2010-2012 (October 1, 2009-September 30, 2012). Based upon examination, DDOT's contractual dollars totaled \$244,702,165.29 of which \$237,202,784.42 (96%) were awarded to prime contractors whose firms conduct business within the Metro Area. Ninety-eight (98%) of the firms that participated on DDOT's federal-aid projects conduct business within the Metro Area. Table 1 provides a detailed outline of the contracting activity during FY 2010-2012.

**Table 1**  
Contracting Activity for Federal-Aid Contracts  
During FY 2010-2012

Description	Total Awards and Commitments for the Period of 2010-2012	Amount Represented by Washington Statistical Area Market	Portion of Metropolitan Washington Statistical Area Market
Geographic Distribution Contract Dollars	\$244,702,784.42	\$ 237,202,784.42	96%
Distribution of Participating Prime Contractors	13	12	92%
Distribution of All Participating Contractors (including subcontractors)	177	174	98%

As specified in Section 26.45(c) of the DBE Regulations, the method used to calculate the relative availability of DBE firms within DDOT’s local area market who are ready, willing and able. This calculation will provide the base figure for Step 1 of the goal setting process. In order to derive at the base figure, DDOT used the bidders list in addition to other supplemental information as described below:

- A comprehensive listing of all bidders lists that included all DBE and non-DBE bidders and/or contractors who at least expressed an interest in doing business with DDOT over the last three years. The bidders were both DBE and non-DBE firms and represented both prime contractors and subcontractors. The bidders’ lists also included firms who were both awardees and non-awardees of contracts with DDOT. It has been determined that 244 firms sought to do business with DDOT on its federal-assisted projects.
- A list of DBEs and non-DBEs actively involved in DDOT’s contracting program over the last three (3) years October 1, 2009-September 30, 2012 (FY 2010 – FY 2012).
- DDOT’s and the Washington Metropolitan Transit Authority’s DBE electronic Directories. These directories comprise of all 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)**.
- DDOT’s Architect and Engineering Prequalification Schedule (A/E Schedule). This triennial competitive list is comprised of prime and DBE professional services firms who are prequalified by DDOT to perform engineering and other professional services on DDOT’s infrastructure-related projects. This list also comprises of DBE and non-DBE firms who are both awardees and non-awardees.
- 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>). This data is used to provide a more accurate account of all firms within the geographic market based upon current census data. The data is collected annually. The data used in this report reflects data which was collected in 2010 and released for public use June 2012.

- The Tips for Goal Setting in the Disadvantaged Business Enterprise Program recommends consideration of state/local MBE/WBE Programs for businesses who would be potential DBE firms. The District of Columbia does not have an MBE/WBE program, however, the District Department of Small and Local Business Development maintains a database of locally based firms and designate small businesses as disadvantaged businesses based upon criteria as established by the Small Business Administration. The database was retrieved electronically and reviewed to remove those firms who are also certified DBE firms through the MWUCP.
- DDOT sponsored a South Capitol Street Industry Day Outreach Session on January 14, 2013. The attendance list is was retrieved and reviewed to see if there were firms that could be included in the data. After reviewing the list, many of the firms that were attendance are captured on other lists for the purpose of this process.

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. DDOT has determined that there are two categories of scope of work that are engaged in its procurement program: highway design and engineering consultants and highway construction contractors. 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 categories of active contractors available for projects planned in FY 2013-2015 from the following NAICS Codes listed in Tables 2 and 3, respectively:

**Table 2  
Highway Design and Engineering (Consultants) NAICS**

NAICS CODE	NAIC DESCRIPTION
561730	Landscaping Services (Non-Architecture)
541611/18	Professional Services
541310/30	Engineering/Architect Services

**Table 3**

## Highway Construction (Contractors) NAICS

NAICS CODE	NAICS DESCRIPTION
237310	Heavy Highway, Bridge & Civil Engineering
238110	Concrete Work
237110	Water, Sewer, Utility
238210	Electrical/Mechanical Contractors
238910	Demolition/Excavate Contractors
238120	Structural Steel Erection Contractors
238320	Painting Contractors
484110	Truckers/Hauling
443320	Material Wholesale (Suppliers)
327320	Ready Mix Concrete/Asphalt Paving Mixtures
339950	Signage

### 2. Calculation of Base Number and Actual Anticipated Work

After all of the data was collected, all lists were sorted, and compared and eliminating all duplicates, a total of approximately **949 DBE** firms were deemed “ready, willing, and able” to perform on DDOT contracts out of a universe of 10,970 firms both DBE and non-DBE firms. The base figure is then calculated by dividing the total number of DBE firms by the total number of firms within the Washington, DC metropolitan area to reflect the percentage of estimated project cost to be completed by the DBE firms. Of the 10,970 available firms, **949 (8.67%)** are DBE certified, ready, willing and able. Table 4 below illustrates the relative availability of DBE firms.

**Table 4**  
**Relative Availability of DBE Firms**

NAICS Code	Dollar Amount	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability	
237310	\$ 79,286,966.69	82	157	0.5223	
238110	\$ 33,138,515.49	47	319	0.1473	
237110	\$ 28,474,576.27	46	134	0.3433	
238210	\$ 23,319,696.08	59	1094	0.0539	
238910	\$ 20,864,991.23	56	405	0.1383	
238120	\$ 22,092,343.66	27	52	0.5192	
238320	\$ 20,128,579.78	52	715	0.0727	
541730	\$ 14,728,229.11	20	1785	0.0112	
541611/18	\$ 42,957,334.89	292	3580	0.0816	
541310/30	\$ 30,683,810.64	216	2342	0.0922	
484110	\$ 60,631,209.82	25	235	0.1064	
443320	\$ 14,973,699.59	15	35	0.4286	
327320	\$ 23,810,637.05	7	97	0.0722	
339950	\$ 4,909,409.70	5	20	0.2500	
<b>Combined Totals</b>		<b>949</b>	<b>10970</b>	<b>0.0865</b>	<b>Overall DBE Availability</b>

Calculation: Total number of DBE Firms = 949 =  $.0865 \times 100 = 8.65\%$

Total number of Firms 10,970

Therefore, the Base Figure is **8.65% or 8.7%**.

In order to determine the specific contracting opportunities for FY 2013-2015, the DDOT has examined projects which are to be financially aided through grants from federal agencies under the Urban Mass Transportation Act of 1964, as amended.

Based on the examination of DDOT’s budget proposed budgets estimates that it will execute contracts totaling (in \$Millions):

FY 2013:	\$140,000,000.00
FY 2014:	\$140,000,000.00
FY 2015:	<u>\$140,000,000.00</u>
	<b>\$420,000,000.00</b>

These dollars are to be utilized for highway, bridge and street construction, including excavation, demolition, backfill, PCC pavement base, resurfacing, sidewalks, and alleys.

Table 4 below shows the percentage of anticipated work that DBE firms are expected to perform on DDOT contracts according to the relevant NAICS Codes from Tables 2 and 3 above:

**Table 5  
Percentage of Work Anticipated on DDOT Contracts**

NAICS CODES	NAICS DESCRIPTION	AMOUNT OF DOT FUNDS ON PROJECT:	% OF TOTAL DOT FUNDS (WEIGHT)
237310	Heavy Highway, Bridge & Civil Engineering	\$79,286,966.69	0.1888
238110	Concrete Work	\$33,138,515.49	0.0789
237110	Water, Sewer, Utility	\$28,474,576.27	0.0678
238210	Electrical/Mechanical Contractors	\$23,319,696.08	0.0555
238910	Demolition/Excavate Contractors	\$20,864,991.23	0.0497
238120	Structural Steel Erection Contractors	\$22,092,343.66	0.0526
238320	Painting Contractors	\$20,128,579.78	0.0479
541730	Landscaping Services (Non-architecture)	\$14,728,229.11	0.0351
541611/18/19	Professional Services	\$42,957,334.89	0.1023
541310/30	Engineering/Architect Services	\$30,683,810.64	0.0731
484110	Truckers/Hauling	\$60,631,209.82	0.1444
443320	Material Wholesale (Suppliers)	\$14,973,699.59	0.0357
327320	Ready Mix Concrete/Asphalt Paving Mixtures	\$23,810,637.05	0.0567
339950	Signage	\$4,909,409.70	0.0117
<b>Total DOT-Assisted Contract Funds</b>		<b>\$420,000,000.00</b>	<b>1</b>

A further analysis revealed that based upon the two categories listed in Tables 4 above, out of a three (3) year total federal aid spending of \$420,000,000, it is anticipated that during FY 2013-15, DDOT anticipates spending approximately \$331,630,625.37 (79%) of federal-assisted funds on

construction and approximately \$88,369,374.63 (21%) on highway design and engineering-related contracts as demonstrated in Tables 7 and 7 below:

**Table 6**  
**Three-Year Anticipated Contract Totals for**  
**Highway Design and Engineering-related Contracts**

NAICS CODE	DDOT DBE FIRMS	METRO AREA TOTAL FIRMS	THREE YEAR CONTRACT TOTAL:	% OF TOTAL DOT FUNDS (WEIGHT)
541730	20	1785	\$14,728,229.11	0.0351
541611/18	292	3580	\$42,957,334.89	0.1023
541310/30	216	2342	\$30,683,810.64	0.0731
	<b>528</b>	<b>7707</b>	<b>\$88,369,374.63</b>	<b>0.2104</b>

The anticipated in the and Engineering firms was calculated as such:

$$\frac{\$88,369,374.63}{420,000,000.00} = .02104 \times 100 = 21.04 \%$$

percentage of work for DBE firms Highway Design

Table 5 below analyzes the anticipated three-year contract total DDOT will spend on highway construction contracts:

**Table 7**  
**Three-Year Anticipated Contract Totals for**  
**Highway Construction Contractors**

NAICS CODE	DDOT DBE FIRMS	METRO AREA TOTAL FIRMS	THREE YEAR CONTRACT TOTAL	% of total DOT funds (weight)
237310	82	157	\$79,286,966.69	0.1888
238110	47	319	\$33,138,515.49	0.0789
237110	46	134	\$28,474,576.27	0.0678
238210	59	1094	\$23,319,696.08	0.0555
238910	56	405	\$20,864,991.23	0.0497
238120	27	52	\$22,092,343.66	0.0526
238320	52	715	\$20,128,579.78	0.0479
484110	25	235	\$60,631,209.82	0.1444
423320	15	35	\$14,973,699.59	0.0357
327320	7	97	\$23,810,637.05	0.0567
339950	5	20	\$4,909,409.70	0.0117
<b>Totals</b>	<b>421</b>	<b>3263</b>	<b>\$331,630,625.37</b>	<b>0.7895</b>

The percentage of anticipated work for DBE firms in the Highway Construction firms is calculated as:

$$\frac{\$331,630,625.37}{\$420,000,000.00} = .7895 \times 100 = 78.95 \text{ or } 79\% \text{ rounded}$$

**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 from Table 6 and 7, and the figures for relative availability of DBEs for each contract from Table 4. This calculation allots funds according to the percentage of work each type of business would perform in the execution of upcoming projects involving the delivery of goods, design, consulting, and construction as illustrated in Table 8.

The calculation is as follows:

$$.79 \frac{[\text{Total number of DBE Heavy Construction Firms}]}{[\text{Total number of Heavy Construction Firms}]} + .21 \frac{[\text{Total Number of DBE Highway Design and Engineering Firms}]}{[\text{Total Number of Highway Design and Engineering Firms}]}$$

$$= .79 \frac{[421]}{[3263]} + .21 \frac{[528]}{[7707]} = .79 * .1290 + .21 * 0.0685 = .1019 + .01438$$

$$= 0.1019 + .01438 = .11629 * 100 = 11.629$$

**Weighted Base Figure= 11.629%**

**Table 8  
Weighted Base Figure Calculation**

Category	WEIGHTED AVAILABILITY	Forecasted % Budget	Weighted Step 1 Base Figure
Highway Construction	12.90	78.95	10.19
Highway Design and Engineering	6.85	21.04	1.43

**FY 2013-2015 Overall DBE Goal**

**11.62**

**Step 2 – Adjustment to Base Figure**

**2. Consideration of Previous Years’ Performance**

**4. Adjusting the Step 1 Base Figure with the Median Past Performance**

49 CFR Section 26.45(d) and the goal setting and methodology guidelines set forth on OSDBU website, examples are data that can be analyzed and taken into consideration in order to adjust the Step 1 Base figure in order to narrowly tailor the goals to the precise local market. The idea is to determine a reasonable level of DBE participation that can be achieved absent discriminatory practices. This adjustment process begins by reviewing the DDOT’s Median Past Performance.

In order to determine past participation performance, the DDOT has collected contracting data over a period of seven (7) years. The adjustment process begins by calculating the DDOT’s “median” past

participation percentages. DBE participation for the past seven (7) years is shown in Table 9 below. The median percentage is determined by the middle percentage for the past seven (7) years.

**Table 9  
MEDIAN FOR THE FIVE YEAR  
CONTRACT PERIOD (FY 2008 – 2012)**

Contract Period	Contracting Volume	% DBE
FY2008	\$ 34,390,957.00	21.80%
FY2009	\$ 106,704,701.00	29.58%
FY2010	\$ 117,909,124.21	11.62%
FY2011	\$ 66,397,918.00	23.41%
FY2012	\$ 60,395,742.21	53.00%

The median percentage of performance is 23.41% past five (5) years

The USDOT OSDBU *Tips* state, “If your records suggest levels of past participation very similar to the number you calculated in Step 1, then it is not necessary to make any adjustment for past participation.” There is a significant difference between the Weighted Base Figure and the Median Past Performance, therefore, an adjustment to the base figure is appropriate. The calculation for the adjustment is as follows: identify the median past performance, which according to the Table 9 above, is 23.41. The median figure is added to the weighted base figure and divided by 2 to determine the median as outlined in the table below.

Median Past Participation	23.41
Weighted Base Figure	<u>11.62</u>
	35.03/2
<b>Overall DBE Three Year Goal</b>	<b>17.52 or 18%</b>

Based upon the calculations above, the overall three-year goal year goal is **18%**.

## 5. 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.**

Other factors of consideration in determining whether an adjustment of the goal is needed are the following:

**a. 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**

Due to the increased interest of DBE firms from other areas entering into DDOT's market and the increased number of small businesses who participate in the District government's local small and local disadvantaged business program applying for DBE certification, DDOT expects an increase in the capacity of DBE firms to perform work in our DOT-assisted contracting program. **Therefore, no adjustment based upon this criterion is necessary at this time.**

**b. Base figure is the goal of another recipient.**

The base figure that was calculated was not that of another recipient, therefore no adjustment based upon this criterion is necessary.

The regulations 49 CFR Part 26(d)(1) requires DDOT to consider evidence, if available, 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;**

DDOT has not performed a disparity study to determine the extent of the difficulty of DBE firms to obtain bonding and insurance to participate in the DBE program. Through informal meetings with various DBE firms and workshops sponsored by the DBE Supportive Services Program, there is an interest, as expressed by the DBE firms, to obtain bonding and/or insurance or to increase their bonding capacity in order to be competitive in this market. However, within the past two years during informal dialogues, a number of DBE firms have requested that DDOT decrease the bonding requirement to a level where small businesses can compete among other small businesses in order to compete as prime contractors on DOT-assisted projects. The request is under consideration by the Agency; however, the DBE Supportive Services Program continues to partner with SBA-approved lenders to provide bond financing education workshops for our small business community. **Therefore, an adjustment based upon this criterion is not necessary at this time.**

(ii) **Data on employment, self-employment, education, training and union apprenticeship programs, as it relates to the opportunities for DBEs to perform DDOT's DOT-assisted program.**

According to the District Department of Employment Services Preliminary Ward Labor Force, Employment, Unemployment and Rate statistics, as of October 2012, the unemployment rate for the Washington-Alexandria-Arlington-DC-MD-VA Metropolitan Statistical Area is 5.1

([http://does.dc.gov/sites/default/files/dc/sites/does/page\\_content/attachments/October\\_12\\_DCarea\\_EmplStatus.pdf](http://does.dc.gov/sites/default/files/dc/sites/does/page_content/attachments/October_12_DCarea_EmplStatus.pdf)). However, the unemployment rate for the District of Columbia is 8.3%. While the unemployment rate for the District is lower than last year's rate of 8.9%, there are three (3) wards within the District of Columbia that continues to lag behind other wards of the city. Ward 5, 7 and 8 has unemployment rates of 11.2, 13.7 and 20.7 respectively. The District has initiated a number of incentives for businesses to

employ District residents. Additionally, there are a number of pre-apprenticeships, apprenticeships and other training opportunities to prepare individuals within the region for the construction industry. These programs are available to assist DBE firms to increase their workforce capacity on DOT-assisted projects. **Therefore, an adjustment based upon this criterion is not necessary at this time.**

**(3) Adjustment to base figure to account for the continuing effects of past discrimination**

At this time, DDOT does not have evidence that would warrant an adjustment to the base figure to account for continuing effects of past discrimination.

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

The DDOT will continue its efforts to meet the maximum feasible portion of its overall goal using Race/Gender-Neutral (R/G-N) means. Historical contracting data for the periods of FY 2011-12 supports DDOT's ability to achieve 18 % DBE participation as evidenced by the calculations below in Table 10.

**Table 10  
Overall DBE Participation for FY 2010-2012**

Fiscal Year	2010	2011	2012	Three-Year Year Total
Total Contracts	\$117,909,124.21	\$ 66,397,918.00	\$58,895,742.00	\$243,202,784.21
Total DBE Participation	\$13,707,275.02	\$ 15,603,237.00	\$31,197,543.00	\$60,508,055.02
Race/Gender Conscious	\$ 7,152,823.52	\$12,643,227.60	\$ 8,941,964.00	\$28,760,992.12
Race Gender/Neutral	\$ 6,554,451.50	\$ 2,905,839.20	\$ 22,255,578.00	\$31,715,868.70
% R/N Participation	5.56%	4.37	37.78	13.04
% R/C Participation	6.06%	19.04	15.22	11.83
% of Total DBE Participation	11.62	23.41	53.00	24.87

The table reflects a noticeable difference in race neutral attainment from 11.62 percent in FY 2010 to 53.00 percent in FY 2012. FY 2010 data may not be correct as the information only reflects the first half of FY 2010. Following the public meeting, additional data collection efforts will be employed to determine the yields. Due to failure to count DBE Primes as Race Neutral Participation, previous reporting likely resulted in the undercounting of race neutral participation. Moving forward, DDOT will track more closely eligible DBE firms who are participating as prime contractors. The opportunity to closely monitor contracting activity that may result in race/gender/neutral goal attainment will come through two avenues: (1) the number of DBE professional services firms who are on DDOT's A/E Schedule who received prime contracts during this period; and (2) construction contractors who are prime contractors.

During FY 2010-2012, DDOT in collaboration with the DBE Supportive Services Program, developed a concentrated business development program that assisted with capacity building, marketing workshops and networking opportunities for DBE firms. Additionally, with the advancement of the 11<sup>th</sup> Street Bridge Project and increased activity within the Anacostia Waterfront Initiative Program, there has been a concerted effort by the prime contractors to identify opportunities for DBE firms. The Office of Civil Rights has increased its engagement with DDOT's program administrations and offered assistance to consider all possibilities where DBE firms can participate in the procurement program. While the prime contracting community continues to demonstrate a commitment to work with DBE firms in a market that requires a certain level of specificity and expertise, there is still a need to continue to address the apparent imbalance in contracting with the understanding that the goal is to develop a narrowly tailored DBE

program. DDOT plans to maintain its ability to continue exercising its authority, when necessary, to impose Race/Gender-Conscious (R/G-C) measures because DDOT believes that R/G-C measures are necessary to ensure equitable DBE participation at the subcontract level and level the playing field for smaller DBEs struggling to compete in this highly competitive market. To determine the race/gender neutral goal for FY 2013-2015, the historical median for overall race neutral participation has to be calculated. Table 11 below examines the median past participation of DBE subcontractors in excess of the goal during the period of FY 2010-2012:

**Table 11  
Race/Gender Neutral DBE Subcontractors for FY 2010-2012**

Fiscal Year	Total Awards	Race Gender/Neutral	% of Total Subcontract Awards
FY 2010	\$117,909,124.21	\$ 6,554,451.50	5.56
FY 2011	\$ 66,397,918.00	\$ 2,905,839.20	4.37
FY 2012	\$ 58,895,742.00	\$22,255,578.00	37.78
		<b>Historical Median</b>	<b>5.56</b>

The next step in calculation the Race/Gender-Neutral participation, DDOT examine the existing available data from fiscal years FY 2010 through FY 2012 to determine the median past participation of DBE prime contractors. Table 12 below provides the following data:

**Table 12  
DBE Prime Contractor Awards For FY 2010-2012  
(Race-Neutral)**

Fiscal Year	Total Awards	DBE Prime Contract Awards (Race Neutral)	% of Total Subcontract Awards
FY 2010	\$117,909,124.21	\$ 2,161,473.00	1.83
FY 2011	\$ 66,397,918.00	\$ 1,189,110.20	1.79
FY 2012	\$ 58,895,742.00	\$21,378,624.00	36.29
		<b>Historical Median</b>	<b>1.83</b>

The data collected is then used to perform the following calculations:

Median Past Participation (MPP) by DBE Prime Contractors 1.83

Median Past Participation by DBE Subcontractors in Excess of Goal 5.56

Anticipated Race-Neutral Participation (5.56 + 1.83) 7.39

Race Neutral Goal: 7.39 or 7%

Overall DBE Goal: **17.51 or 18%**  
**18.00-7.00**

Race Conscious Goal: **11.00**

Race/Gender Neutral Goal: 7%

In consideration of these factors, the DDOT believes that the continued use of both Race/Gender-Neutral and Race/Gender-Conscious measure are necessary in order to achieve fair/equitable contracting and recommends a three year (2013-2015) DBE Goal to be adjusted to **11%** using Race/Gender-Conscious and **7%** using Race/Gender-Neutral measures.

In accordance with federal regulations, DDOT will comply with the DBE program's objective to meet its maximum feasible portion of its overall DBE through race neutral means. DDOT will monitor the Agency's contract activity and its progress towards attainment. The Agency will make the adjustments as necessary consistent with the regulations. Additional methods used to increase participation through race neutral means are included in Appendix A.

### **PUBLIC PARTICIPATION – 2013-2015 DBE GOAL COMMUNITY COMMENTS**

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. Public comments are currently being gathered during the 45 day open comment period. The process for involving the public and capturing relevant comments is as follows:

During March 2013, a public notice is scheduled to be posted on DDOT's website (<http://ddot.dc.gov/DC/DDOT/About+DDOT/Who+We+Are/Civil+Rights/Disadvantaged+Business+Enterprises>) and distributed widely to the business community at large announcing the 45 day comment period as well as the 30 day public review period. Additionally, a public meeting will be scheduled for late March 2013. Additionally, the notice will be published in the following seven (7) publications including minority-focused newspapers within the Washington region:

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

Mohammed Kabir at (202) 299-2190 and Luisa Portillo at (202) 671-0630 will receive comments and questions concerning this methodology. Once the 45 day comment period has ended and all comments have been analyzed, DDOT will make a determination if further **Step 2 Adjustments** are required.

**APPENDIX A-**  
**DDOT'S RACE NEUTRAL ACTIVITIES**

During FY 2010-12, DDOT engaged in a number of race neutral activities targeted to support the small business community. The DBE Supportive Services Program, partnered with its regional small business development partners to offer a variety of business development activities.

**SMALL BUSINESS CAPACITY BUILDING ACTIVITIES**

The DDOT has continued 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.

**DEVELOPMENT OF THE BUSINESS ASSISTANCE PROGRAM (BAP)**

In FY 2011, the DBE Supportive Services Program contracted with MHM Financial Services to develop a needs assessment for DBE Firms, recruit and provide technical assistance to twenty-five (25) DBE firms in the Business Assistance Program (BAP) and provide additional training to the small business community. The assistance will also serve as the beginning of a roadmap for the Agency as it seeks to develop a stronger race-neutral small business program and to facilitate new firms who are seeking to participate in DDOT's highway and road construction procurement program.

**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.

**2013-2015 DBE GOAL COMMUNITY COMMENTS**

DDOT will hold a public meeting to receive comments specifically about the establishment of its FY 2013-2015 DBE Goal. In accordance with 49 CFR Part 26.45(g)(1) and (2), the meeting notice will be published in various local news publications and on DDOT's website. 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.

### **Business Assistance Program (BAP)**

MHM Financial Services, the DBE/SS Consultant, distributed an approved needs assessment to 650 DBE firms that are DDOT/WMATA certified. The DBE firms were grouped into three categories: general DBE firms; the 40 active DBE firms who currently or recently held subcontracts or contracts on the Agency's federal-aid projects; and those firms who are receiving ongoing supportive services or who have required some level of intervention from the Office of Civil Rights during the past two years. The needs assessment consisted of 61 questions and the responses were analyzed to determine areas of strengths, weaknesses and business capacity. Of the 650 DBE firms that were provided the survey, 84 DBE firms completed needs assessments. Out of the 84 respondents, 60 expressed an interest in participating in the Business Assistance Program.

### **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.

### **11<sup>th</sup> Street Bridge Small Business Development and Outreach Activities**

In partnership with our 11<sup>th</sup> Street Bridge Design Build Project DBE Project Management Team, OCR along with our sister agencies, District Department of Small and Local Business Development, Department of Housing and Community Development and the Department of General Services, hosted a workshop entitled, Vertical vs. Horizontal: How to Leverage Your Business Capacity on Federal-aid Projects. This workshop was opened to all small businesses who are engaged in vertical (building) construction to consider their transferrable skill sets to horizontal (infrastructure) construction.

OCR's Business Opportunity and Workforce Development Team will continue to pool available resources, in partnership with our sister agencies, the Department of Small Business Development, Department of Housing and Community Development, the Department of General Services and the Office of Contracting and Procurement, to provide training and workshop opportunities in an effort to increase the number of DDOT's pool of firms who are ready, willing and able to compete and perform on the Agency's federal-assisted contracts

### **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 publishes a quarterly electronic newsletter to inform the prime contracting community of the various resources available to increase their DBE subcontractors' financial capacity, safety qualifications and technical skills. The newsletter also informs 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.

### **11th Street Bridge Project**

The DBE Supportive Services through the BOWDC is actively engaged in informing the small business community regarding upcoming business opportunities on the 11<sup>th</sup> Street Bridge Project. This \$260 million, 4 ½ year project is considered to be a major economic development stimulus for communities east of the Anacostia River and those communities that border the bridge project. The BOWDC Coordinator facilitated a meeting with the contractor, Skanska/Facchina Joint Venture (SKJV) and representatives from several community-based and national organizations representing the minority and small business and workforce development constituencies and the District Department of Small and Local Business to plan a series of outreach activities. Among the small business advocacy groups is the Metropolitan Washington Area Chapter of the National Association of Minority Contractors (NAMC). The contractor, SKJV is a corporate sponsor for this organization and DDOT values the advocacy effort of the NAMC to ensure that the small business community has a fair and equal opportunity to participate on this project.

On February 18, 2010, the contractor in partnership with DDOT, held its first 11<sup>th</sup> Street Bridge Small Business Vendor Fair. This key outreach event which attracted over 100 vendors had several purposes: (1) to introduce the contractor to the small business community; (2) to provide the small business community an opportunity to learn about contracting opportunities on this project; and (3) to ensure a transparent process that holds the contractor accountable in meeting its DBE goals through their good faith effort requirement.

During the latter part of FY 2011, the BOWDC Management team collaborated with the Business Transformation Group (BTG), a management consultant team to assist the HNTB, the contract management company for the 11<sup>th</sup> Street Bridge Project. An integral component of BTG's responsibilities is to assist the prime contractor, Skanska/Facchina Joint Venture (SFJV), increase outreach activities targeting the small business community regarding upcoming business opportunities on the 11<sup>th</sup> Street Bridge Project. Several outreach events and the utilization of an assessment tool were developed to increase the number of local area firms who would be eligible to consider subcontracting opportunities on the project.

The first of such activities occurred on September 30, 2011, with an 11<sup>th</sup> Street Bridge Project Information Session. The purpose of the information session was to provide an update of the project and possible business opportunities for DBE and other small

businesses firms to consider during the final phase of construction of the 11<sup>th</sup> Street Bridge. Over 40 firms were in attendance and were able to network with SFJV's procurement and DBE outreach staff. Additional outreach activities are scheduled for FY 2012 which began October 1 and will be reported during the FY 2012 program year.

## **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:

- 6) 30-Hour OSHA courses
- 7) 10-Hour OSHA Courses (including rollover/rollback safety)
- 8) Construction Math, Blue Print Reading and Estimating
- 9) Flagger Courses
- 10) 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.

### **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 11<sup>th</sup> 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.

### **ADDITIONAL OPPORTUNITIES/EVENTS**

The DDOT OCR and the DBE/SS Team engaged in several activities that were targeted towards the small business community at large. The following race/neutral activities are outlined below.

#### **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, under the leadership of Darrell Brown and the SBDC 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.

### **Outreach Activities**

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

6. Exhibitor at the Annual OSDBU Procurement Fair
7. Participated as a panelist during the Congress Heights Community Leadership Development Council with the Office of Contracts and Procurement
8. Exhibitor at the Metropolitan Washington Airports Authority Annual Business Opportunity Day
9. Exhibitor at the U.S. Department of Transportation OSDBU Veterans Event
10. 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.

### **Federal Highway Administration Headquarters Office of Civil Rights and the District of Columbia Division.**

The FHWA supports the BOWDC programs by utilizing funds authorized under 23 USC 140c for a total contribution for one year of the program for \$99,000. However, DDOT is currently utilizing the remaining prior years' funding to implement this program. Further, the OCR will provide leadership and technical assistance on the development and implementation of the BOWDC program.

DDOT welcomes the opportunity to work directly with FHWA staff to provide local oversight of the program throughout the duration of the project.

### **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.

# **Attachment 6**

## **Contract Goal Worksheet**



NAME OF PROJECT:							
Project Cost:							
			PERCENTAGES PER ENGINEER			DBE GOAL CALCULATION	
NAIC	NAIC DESC	TOTAL PER ESTIMATE	PERCENTAGE OF SCOPE	COST PER PERCENTAGE		DBE REL AVAIL	Weighted base figure
237310	Highway, Street Construction		0%	#VALUE!			#VALUE!
238110	Concrete Work		0%	#VALUE!			#VALUE!
237110	Water & Sewer, Utility Construction		0%	#VALUE!			#VALUE!
238210	Electrical/Mechanical Contractors		0%	#VALUE!			#VALUE!
238910	Site Preparation/Excavation		0%	#VALUE!			#VALUE!
238120	Structural Steel Erection Contractors		0%	#VALUE!			#VALUE!
238320	Painting Contractors		0%	#VALUE!			#VALUE!
541730	Landscaping		0%	#VALUE!			#VALUE!
484110	Trucking		0%	#VALUE!			#VALUE!
443320	Material Wholesalers		0%	#VALUE!			#VALUE!
327320	Ready Mix Concrete/Asphalt Paving Mixtures		0%	#VALUE!			#VALUE!
339950	Signage		0%	#VALUE!			#VALUE!
<b>TOTALS</b>			0%	#VALUE!			#VALUE!
						DBE GOAL PERCENTAGE	#VALUE!
						DBE GOAL FOR THIS PROJECT:	7%
<b>GRAND TOTAL</b>						Prepared by: <b>Mohammed Kabir</b>	
						Approved by: <b>Lisa Gregory, Chief OCR</b>	
						DATE: _____	

## **Attachment 7**

### **Breakout of Estimated Race-Neutral & Race-Conscious Participation FHWA/FTA**

**For FTA –Assisted Projects:** DDOT will meet its overall goal of **11.5 percent** of which **9.5 percent** is race conscious and **2 percent** is race neutral.

**For FHWA-Assisted Projects:** DDOT will meet its overall goal of **18 percent** of which **12 percent** is race conscious and **6 percent** is race neutral.

# **Attachment 8**

## **Forms 1 & 2 for Demonstration of Good Faith Efforts**

**GOVERNMENT OF THE DISTRICT OF COLUMBIA  
DEPARTMENT OF TRANSPORTATION**



**OFFICE OF CIVIL RIGHTS  
Good Faith Efforts Process Instructions**

The Federal Code of Regulations 49 CFR Part 26, Appendix A, impose specific requirements on guidance concerning Good Faith Efforts (GFE). The following is an overview of the GFEs that should be conducted by the Prime Contractor and Subcontractors, as appropriate, to implement and document contract compliance.

<b>Project Number</b>		<b>Project Name</b>	
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Contractors will demonstrate their support of the contracting goals through the exercise of Good Faith Efforts (GFE). The parties agree that

- a) the term "Good Faith Efforts", as used in this document, is not intended to constitute, nor shall it be interpreted or construed as, a legal term of art;
- b) "good efforts" shall not require that the contractor undertake any actions which are contrary to good business practices, such as:
  - i. Hiring of unqualified subcontractors, or
  - ii. Subcontractors who submit non-competitive bids.

The following standards are important to ensure effective implementation of project contracting goals. The District Department of Transportation (DDOT) Office of Civil Rights (OCR) is responsible for ensuring that contractors comply with them. Examples of GFE's include but are not limited to the following:

- Advertising in general circulation, trade association, and in media concerning subcontracting opportunities;
- Providing timely and written notice to certified Disadvantaged Business Enterprise (DBE) businesses that subcontracting opportunities are available. Notice should include to the utmost level possible, the plans, specifications and anticipated time schedule for portions of the work to be performed;
- Follow-up the initial solicitations of interest by contacting certified DBE businesses to determine the certainty whether the firms are interested. Detailing the efforts with the names, addresses, dates and telephone numbers of the certified DBE businesses and contacts;
- Negotiating in good faith with interested certified DBE businesses;
- Making an effort, where feasible, to assist interested certified DBE businesses in obtaining information and/or access to bonding, lines of credit, or insurance as required by DDOT or Prime Contractor;
- Coordinating any Pre-Bid Meetings with certified DBE businesses to inform of subcontracting or vendor opportunities;
- Using effectively the services of DDOT Office of Civil Rights office, area business associations, and other organizations to provide assistance in the recruitment of certified DBE businesses; and
- Encouraging the use of contracting approaches such as joint ventures and trade alliances to increase the likelihood of contracting with certified DBE businesses.



**LETTER OF INTENT**

Name of bidder/offertory's firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Telephone: \_\_\_\_\_

Description of work to be performed by DBE firm:

\_\_\_\_\_

\_\_\_\_\_

The bidder/offer or is committed to utilizing the above-named DBE firm for the work described above. The estimated dollar value of this work is \$ \_\_\_\_\_.

**Affirmation**

The above-named DBE firm affirms that it will perform the portion of the contract for the estimated dollar value as stated above.

By \_\_\_\_\_

(Signature)

(Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.

(Submit this page for each DBE subcontractor.)

# **Attachment 9**

## **Procedures for Removal of DBE's Eligibility**

### **Procedures for Removal of 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 decision maker 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.

## Attachment 10

**Certification Application Forms  
(Separate Attachment)**

**Attachment 11**

**Regulations: 49 CFR Part 26**  
**(Separate Attachment)**

**Attachment 12**

**13 CFR Part 121**  
**(Separate Attachment)**