Fort Bend County
Public Transportation Department

Disadvantaged Business Enterprise (DBE) Program

FORT BEND
TRANSIT

APPROVED BY FORT BEND COUNTY COMMISSIONERS COURT
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DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
PURSUANT TO 49 CFR PART 26

§26.23 POLICY STATEMENT

Fort Bend County (herein referred to as the "County") has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26, for the Fort Bend County Public Transportation (FBCPT) Department. The County has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the County has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the County 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:

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

FBCPT designates the Procurement and Contracts Manager as the Disadvantaged Business Enterprise Liaison Officer (DBELO). In that capacity, the DBELO 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 County in its financial assistance agreements with the Department of Transportation.

The County Commissioners Court has approved this document, and the DBELO will disseminate this policy statement to all affected County Departments. The DBELO will also distribute this statement to DBE and non-DBE business communities that perform work for the County on FTA-assisted contracts in the same period. This distribution will be accomplished through the publication of the program on the County's website and by regular or electronic mail to all affected parties.

KP George
KP George, County Judge

1.9.2024
Date

REVIEWED BY:

Perri L. D'Armond
Perri L. D'Armond, Fort Bend County Public Transportation Director

12/20/23
Date

SUBPART A - GENERAL REQUIREMENTS

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

§26.3 Applicability
The County is the recipient of Federal transit funds authorized by the Safe Accountable Flexible Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), the Moving Ahead for Progress in the 21st Century Act (MAP-21) Fixing America's Surface Transportation (FAST) Act, and Infrastructure Investment and Jobs Act.

§26.5 Definitions
The County will adopt the definitions contained in 49 CFR Part 26 for this program.

§26.7 Non-discrimination Requirements
The County will not exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

In administering its DBE program, the County 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 or the objectives of the program concerning individuals of a particular race, color, sex, or national origin.

§26.11 Record Keeping

§26.11(a)
The County will transmit the Uniform Report of DBE Awards or Commitments and Payments at the intervals stated on the Appendix B to Part 26 Form.

§26.11(b)
The County will report DBE participation on a Semi-annual basis, using the Uniform Reporting of DBE Award or Commitments and Payments form. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

§26.11(c) Bidders List
The County will create a bidder list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. Information shall include firm name, address, status as a DBE or non-DBE, the age of the firm, and the annual gross receipts of the firm. The purpose of this requirement is to allow use of the bidder's list approach to calculate overall goals. The County will collect this information in the following ways:

In each formal solicitation, the County includes the vendor form and subcontractor participation form (Exhibit D) that includes all required information for each vendor to complete and submit to help maintain the bidder's list.

§26.13 Recipient and Contractor Assurances
The County has signed the following assurances applicable to all DOT-assisted contracts and their administration:

§26.13(a) Assurance
The County shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. The County shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure non-discrimination in the award and administration of DOT-assisted contracts. The County's DBE Program, as required by 49 CFR Part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation, and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the County of its inability to carry out its approved program, the Department may impose a sanction as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (3 1 U.S.C. 3801 et seq.).

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

§26.13(b) Contract Assurance
The County will ensure the following clause is placed in every DOT-assisted contract and subcontract:

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

SUBPART B – ADMINISTRATIVE REQUIREMENTS

§26.21 DBE Program Updates/Changes
Since the County has received a grant of $250,000 or more in FTA planning, capital, and/or operating assistance in a federal fiscal year, the County will continue to carry out this program until all funds awarded to the Public Transportation Department from DOT

financial assistance have been expended. The County will provide to DOT updates representing significant changes in the program.

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

§26.25 Disadvantaged Business Enterprise Liaison Officer (DBELO)
The County has designated the following individual as our DBE Liaison Officer:

Brandi Pittman
3737 Bamore Rd.
Rosenberg, TX 77471
281-633-7433
Transit@fortbendcountytx.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the County complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the Public Transportation Director concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Exhibit A 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 one to assist in the administration of the program. The duties and responsibilities include the following:

1. Gather and report statistical data and other information as required by DOT.
2. Review third party contracts and purchase requisitions for compliance with this program.
3. Work with all FBCPT's departments to set overall triennial goals.
4. Ensure 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).
6. Analyze FBCPT's progress toward attainment and identify ways to improve progress.
7. Participate in the pre-bid meetings.
8. Advise the Public Transportation Director on DBE matters and achievement.
9. Provide DBEs with information and assistance in preparing bids, obtaining bonding, and insurance requirements.
10. Plan and participate in DBE training seminars.
11. Provide outreach to DBEs and community organizations to advise them of opportunities.

12. Maintain the updated directory on certified DBEs.
13. Review all bid and proposal documents for transit vehicles and ensure Transit Vehicle Manufacturers (TVM) Certification is included (Section 26.19).
14. Monitor work committed to DBEs at contract award and after that to ensure work is performed by DBEs and provide written certification of this activity. Written records will include running tally of actual attainment.
15. Ensure contract documents have required clauses.
16. Monitor prime contractor sub-contracts for required clauses.
17. Monitor contract to ensure sub-contractors are paid as required.
18. Investigate and report all allegations of non-payment by contractors.
19. Investigate and prepare recommendations on Good Faith Efforts.
20. Monitor the Texas Unified Certification Program (TUCP) list to determine if over concentration for DBEs in certain types of areas has occurred, and as applicable, develop written procedures to address.
21. Refer potential DBE firms to TUCP.

§26.27 DBE Financial Institutions

It is the policy of the County to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions and to encourage prime contractors on DOT-assisted contracts to make use of these institutions. Fort Bend County made efforts to identify DBE financial institutions by doing research on the internet and the TUCP directory for DBE-owned financial institutions in the local areas. As of the date of submission of this DBE Program, the County has not identified any DBE financial institutions.

§26.29 Prompt Payment Mechanisms

The County does not prohibit the use of holding retainage as applicable and applies the following prompt payment and monitoring mechanism, accordingly.

The County includes the following clause in each DOT-assisted prime contract:

Under this contract, the prime contractor agrees to pay each subcontractor for satisfactory performance of its contract within 30 days from the receipt of each payment the prime contractor receives from the County. The prime contractor further agrees to full payment of retainage to each subcontractor within 30 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 the County. This clause applies to both DBE and non-DBE subcontracts.

To comply with the intent of this provision, the prime contractor must:

1. Include the above clause in the subcontractor’s contracts.

2. Provide the name of the prime contractor, address, and phone number of its contact person to whom all invoice/billing statements must be sent.
3. Pay subcontractors and suppliers within 30 days of receipt of payment from the County.
4. Stipulate the reason(s) in writing to the subcontractor or supplier and the County for not paying an invoice within 30 days. Reasons for delay or non-payment require prior written approval and may take place only for good cause such as:
    a. Failure to provide all required documentation.
    b. Unsatisfactory job performance.
    c. Disputed work.
    d. Failure to comply with other material provisions of the contract.
    e. Third-party claims filed or reasonable evidence that a claim will be filed.
    f. Reasonable evidence that the contract cannot be completed for the unpaid balance of the contract sum or a reasonable amount of retainage.
5. Maintain records and documentation of payments to DBEs for three years following the performance of the contract. These records must be made available for inspection upon request by an authorized representative of the County or DOT. This reporting requirement also extends to any certified DBE subcontractor.

Subcontractor must:

1. Submit invoices or billing statements to the Prime Contractor's designated contact person in an appropriate format and promptly. The format and the timing of billing statements must be specified in the contract(s) between the Prime and the subcontractor(s).

DBELO shall:

1. Investigate all allegations of nonpayment by the contractor.
2. Provide a written statement of the finding to the complainant within 15 days of receipt of the complaint(s).
    a. If the finding is determined to be not valid, the County may withhold payments in the amount of the unpaid portion of the Prime Contractor’s invoice.
3. Perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure the actual amount paid to DBE subcontractors equals the dollar amounts stated in the schedule of DBE participation.

§26.31 DBE Directory

The County participates as a non-certifying partner in the Texas Unified Certification Program (TUCP). As a non-certifying partner, the County agrees to comply with the TUCP Memorandum of Agreement that establishes the DBE Unified Certification Program in the

State of Texas in accordance with 49 CFR Part 26. A copy of the TUCP Memorandum of Agreement is included as Attachment F10 in Exhibit H Memorandum of Understanding with TxDOT. Interested persons can obtain information by contacting or accessing the link below:

Texas Department of Transportation (TxDOT)
Civil Rights Division
125 E. 11th Street
Austin, TX 78701-2483
Tel: 800-558-9368
512-463-8588
Fax: 512-486-5539
Website: https://www.txdot.gov/inside-txdot/division/civil-rights/tucp.html

§26.33 Overconcentration
The County has not identified that overconcentration exists in the types of work that DBEs perform.

§26.35 Business Development Programs
The County has not established a Business Development Program.

§26.37 Monitoring and Enforcement Mechanisms
The County will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. The County will bring to the Department of Transportation's attention any false, fraudulent, or dishonest conduct in connection with the program so that DOT can take necessary action. The steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment, or Program Fraud and Civil Penalties rules) are provided in 49 CFR Part 26.107.

2. The County will consider similar action under its legal authorities, including responsibility determinations in future contracts. Exhibit I lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.

3. The County will provide a monitoring and enforcement mechanism to verify the work committed to DBEs at contract award is performed by the DBEs. This will be accomplished by:
    a. Reviewing contract records and engaging in active monitoring of worksites to ensure that work committed to DBEs at contract award, or subsequently (e.g., as the result of modification to the contract), is performed by the DBEs

to which the work was committed. Worksite monitoring is performed by the DBELO.

b. Requiring Prime Contractors to report DBE work completed in each monthly progress report along with an indication of the number of hours worked, costs incurred, and the amounts paid to DBE(s).
c. Ensuring that DBE participation is credited toward the overall goal or contract goals only when payments are made to DBE firms.
d. Requiring contractors to complete the Vendor Payment Report to capture all payments on FTA-funded contracts of DBE and non-DBE work performed along with their invoice(s).
e. Providing a written certification that the County has reviewed contracting records, and worksites have been monitored to ensure that the DBEs performed the work committed to DBEs. Written certification shall be provided by the DBELO.

4. The County shall keep a running tally of actual DBE attainments (e.g., payments made to DBE firms), for work committed to them at the time of contract award.

5. The County may include the following mechanisms to ensure prompt payment compliance:
    a. Notify subcontractors (DBE and non-DBEs) by including language in bid documents and contracts related to the Prime Contractor's responsibility for prompt payment and encourage subcontractors to notify the County in writing of any possible violations to the prompt payment mechanism.
    b. Withhold payment from Prime Contractors that do not comply with the prompt payment provision detailed in §26.29 of this program, where the County has determined that delay of payment to the subcontractor is not justified.
    c. Stop work on the contract until compliance issues are resolved.
    d. Terminate the contract.

§26.39 Fostering Small Business Participation

The DBELO will review all bidding opportunities to determine the feasibility of structuring the contracting requirements to facilitate small business participation and taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime or subcontractors.

To actively foster small business participation, the County will refer individuals/small businesses interested to the City of Houston’s Office of Business Opportunity, which uses the same size standards used by the Small Business Administration for verification that the business is indeed a small business. Once confirmed as a small business, the DBELO will

add the firm to the Bidder's List, and they will be given opportunities to bid on service and supply contracts issued as demonstrated on the Small Business Profile in Exhibit B.

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING

§26.43 Set-asides or Quotas

The County does not set-aside or use quotas in any way in the administration of the DBE program.

§26.45 Overall Goals

A description of the methodology to calculate the overall goal and the goal calculations can be found in Exhibit C to this program. This section of the program will be updated every three (3) years.

If the County does not anticipate awarding more than $250,000 in DOT-assisted contracts within the federal fiscal year, the County will not develop an overall goal; however, the existing DBE program will remain in effect and the County will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

In establishing the overall goal, the County will consult with minorities, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the County's efforts to establish a level playing field for the participation of DBEs.

When submitting the overall goal, the County will provide documentation of the consultation process.

The County will publish a notice informing the public that the proposed goal and its rational are available for inspection during normal business hours at the Fort Bend County Public Transportation office for 30 days following the date of the notice. DOT will accept comments on the goals for 45 days from the date of the notice. The notice will include addresses to which comments may be sent, will be posted on the Public Transportation's official website and published in the newspaper of record for Fort Bend County. If there is a proposed change to the goal following the review by FTA, the revised goal will be posted on Fort Bend County Public Transportation's website.

The County's overall goal submission to DOT will include a summary of information and comments received during this public participation process, including the County's responses.

In accordance with 49 CFR 26.45(f), the County will submit its overall goal to FTA on **August 1 every three (3) years.** The County will review the TUCP listing to obtain information concerning the availability of additional disadvantaged and non-disadvantaged businesses for participation in the program to ensure the goal continues to fit our circumstances appropriately.

The County will begin using the overall goal on October 1 of each year, unless DOT has issued other instructions. If the County establishes a separate goal on a project basis, the County will begin using the project goal on the date the FTA-assisted contract is awarded.

§26.47 Failure to Meet Overall Goals

The County cannot be penalized or treated as being in noncompliance if DBE participation falls short of the overall goal unless the County failed to administer the program in good faith. If the County does not have an approved DBE program or overall goal, or if the County fail to implement either, the County is noncompliant. The County must take certain actions to be regarded by the DOT as implementing our DBE program in good faith, as described in 49 CFR 26.47.

The County understands that to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained and administered in good faith.

The County understands that if the awards and commitments shown on the 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, the following actions must be taken in order to be regarded by the DOT as implementing this DBE Program in good faith:

a. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
b. Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
c. Prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (a) and (b) of this section. The County will retain a copy of the analysis and corrective actions in records for a minimum of three years (3) and will make it available to FTA upon request.

§26.49 Transit Vehicle Manufacturers (TVM)

Only those manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved at the time of solicitation, will be eligible to bid. If a manufacturer fails to implement the DBE Program in the manner described in this section and throughout 49 CFR part 26, they will be deemed as non-compliant, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.

The County 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 by requiring manufacturers to provide signed certification of compliance in bid and proposal documents. Alternatively, the County may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles instead of the manufacturer complying with this element of the program. Transit vehicles must be purchased from a DBE-certified transit vehicle manufacturer (TVM) and reported to FTA within 30 days of purchase.

§26.5l Means to Meet Goals

§26.5l (a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation
Each time the County submits its overall goal for review, the County will also provide our projection of the portion of the goal that is expected to be met through race-neutral means and the basis for that projection in conjunction with our overall goal. The breakout of estimated race-neutral and race-conscious participation is found in Exhibit C to this program. This section of the program will be revised every three (3) years.

§26.5l (d-g) Contract Goals
The County will establish contract goals to meet any portion of the overall goal the County does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means. The County may establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. The County will express its contract goals as a percentage of total amount of a DOT-assisted contract. The County need not set a contract goal on every DOT-assisted contract, and the percentage of contract goal will be adapted to the circumstances of each contract (e.g., type and location of work, availability of DBEs to perform the particular kind of work). The contract goals must provide for participation by all certified DBEs and will not be subdivided into group-specific goals.

§26.53 Good Faith Efforts Procedures

§26.53(a) & (c) Demonstration of Good Faith Efforts
The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has made good faith efforts either meeting the contract goal or documenting its good faith efforts as provided in Exhibit G.

The DBELO is responsible for determining whether a bidder/offeror who has not met the contract goal has documented adequate good faith efforts to be regarded as responsive.

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

§26.53(b) Information to be Submitted
Award of a contract will be conditioned on meeting the requirements of this section. For each solicitation for which a contract goal has been established, the County will require the bidders/offerors to submit the following information with initial proposals:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE firm that is participating in the contract as provided in the prime contractor's commitment; and
6. Evidence of good faith efforts if the contract goal cannot be met.

§26.53(d) Administrative Reconsideration
A bidder/offeror may request administrative reconsideration within five (5) days of being informed by the County that it is not responsive because it has not documented sufficient good faith efforts. The Bidder/offeror should make this request in writing and submit it to the County reconsideration official.

Fort Bend County Public Transportation Department
ATTN: Community Relations Manager
301 Jackson Street
Rosenberg, TX 77469
281-633-7433

The Community Relations Manager will not have played any role in the original determination that the bidder/offerors 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 the County reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so. The County 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 County reconsideration official will make the final determination within 15 business days of receipt of a written request for administrative reconsideration. The result of the

reconsideration process is not administratively appealable to the Department of Transportation.

§26.53(g) Good Faith Efforts for Prime Contractor
The County will require the prime contractor to make good faith efforts to replace or substitute a DBE subcontractor that is terminated. 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 established for the procurement. The good faith efforts shall be documented and submitted to the DBELO within 14 business days, and the contractor shall receive a written determination stating whether or not good faith efforts have been demonstrated.

§26.55 Counting DBE Participation
The County will only count DBE participation of the work performed by a DBE toward the DBE goals, as outlined in 49 CFR 26.55.

SUBPART D – CERTIFICATION STANDARDS
Certification Standards are not applicable to Fort Bend County.

§26.61 - 26.73 Certification
The County will rely on the Texas Unified Certification Program (TUCP) administered by the Texas Department of Transportation for certification compliance. The TUCP uses the certification standards of 49 CFR Part 26 Subpart D to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts.

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

Texas Department of Transportation (TxDOT)
Civil Rights Division
125 E. 11th Street
Austin, TX 78701-2483
Tel: 800-558-9368
512-463-8588
Fax: 512-486-5539
Website: https://www.txdot.gov/inside-txdot/division/civil-rights/tucp.html

SUBPART E – CERTIFICATION PROCEDURES
Certification Procedures are not applicable to Fort Bend County.

§26.89 Certification Appeals
Any firm or complainant may appeal a decision in a certification matter to DOT. Such appeal letters may be mailed to:

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

SUBPART F – COMPLIANCE AND ENFORCEMENT

§26.109 Information, Confidentiality, Cooperation, and Intimidation or Retaliation

(a)Availability of Records
In responding to requests for information concerning any aspect of the DBE program, the County complies with provisions of the Texas Public Information Act, Tex. Gov't. Code Ann. §552.001 et. seq. The County may make available to the public any information concerning the DBE program as required by the Attorney General's Office.

To the extent allowed by law, the County will not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, the County must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other state to which the individual's firm has applied for certification under CFR Part 49 26.85.

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

(c)Cooperation
All participants in the Department's DBE program are required to cooperate fully and promptly with DOT compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action.

(d)Intimidation and Retaliation
The County will not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If the County violates this prohibition, it will be deemed in noncompliance with this part.

Monitoring Payments to DBEs
The County will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the County or DOT. This reporting requirement also extends to any certified DBE subcontractor.

The County will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

CONTACT AND WEBSITE INFORMATION

For additional information regarding this document, please contact:

Mailing Address:
Fort Bend County Public Transportation Department
Disadvantaged Business Enterprise Liaison Officer (DBELO)
301 Jackson Street
Rosenberg, TX 77469

Toll Free:	866-751-TRIP (8747)
Office Number:	281-633-RIDE (7433)
Fax Number:	832-471-1843
Email:	Transit@fortbendcountytx.gov

Website: www.FBCTransit.org

EXHIBITS

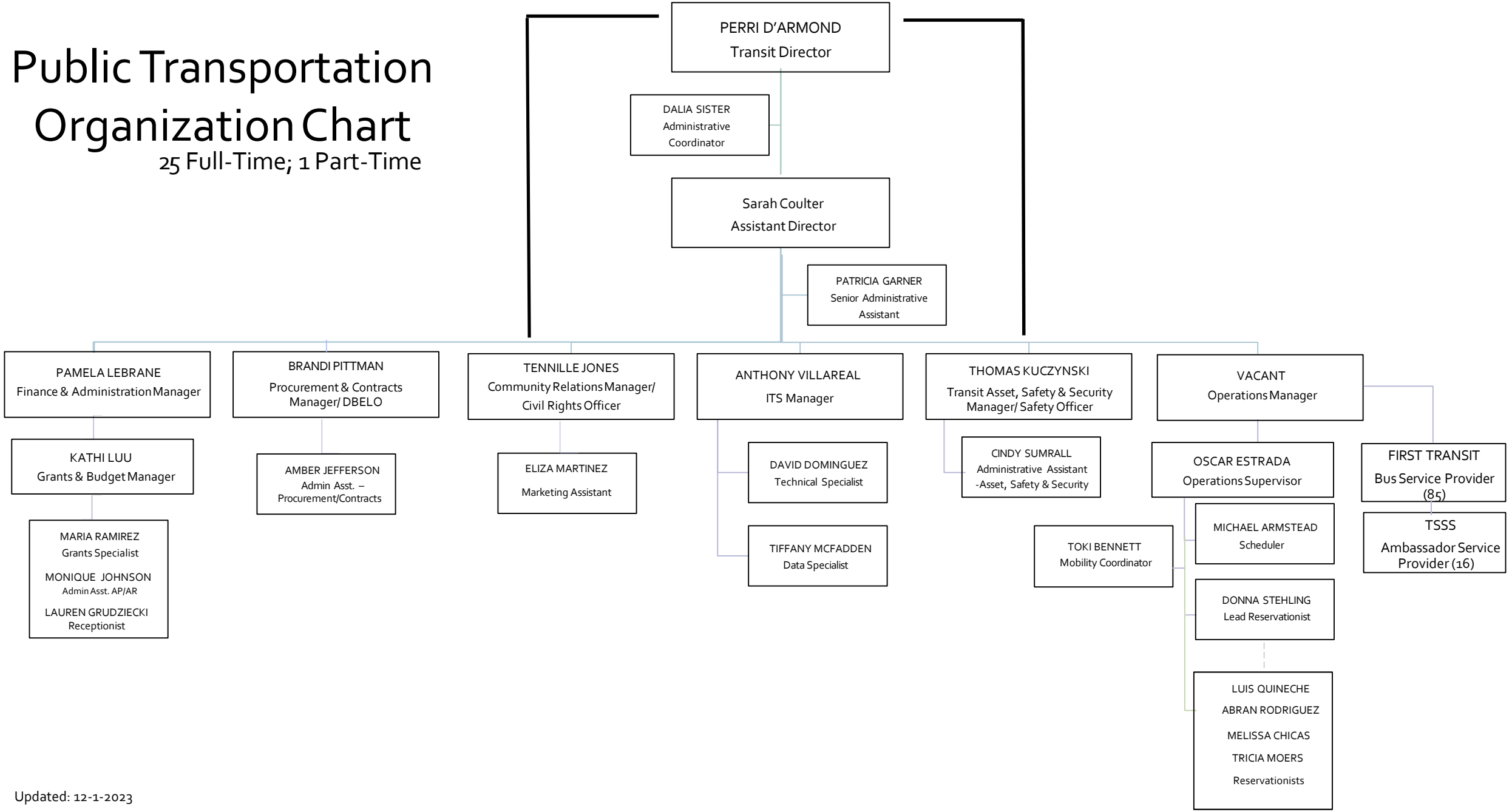
Exhibit A: Fort Bend County Public Transportation Organizational Chart
Exhibit B: Small Business Profile
Exhibit C: Overall Goal and Methodology
Exhibit D: Subcontractor Participation
Exhibit E: Intent to Perform as a DBE Contractor/Subcontractor
Exhibit F: DBE Certification Application Form
Exhibit G: Demonstration of Good Faith Efforts
Exhibit H: Memorandum of Understanding with TxDOT
Exhibit I: 49 CFR Part 26

EXHIBIT A

Fort Bend County Public Transportation Organizational Chart

Public Transportation Organization Chart

25 Full-Time; 1 Part-Time



Updated: 12-1-2023

EXHIBIT B

Small Business Profile

Fort Bend County Public Transportation
Small Business Profile

Contact Information

Name: _____ Title: _____

Phone: _____ Fax: _____

Email: _____

Organization/Company Information

Name: _____

Address: _____

Phone: _____ Fax: _____

Ethnicity/Gender: _____

Are you certified? ☐ Yes ☐ No

If so, check all that apply:

- ☐ SBE - Small Business Enterprise
- ☐ DBE - Disadvantaged Business Enterprise
- ☐ HUB - Historically Underutilized Business
- ☐ Other: _____

If no, are you interested in becoming certified? ☐ Yes ☐ No

List as many North American Industry Classification System (NAICS) Codes that are applicable to your business description (http://www.census.gov/eos/www/naics/).

_____

_____

_____

_____

_____

Please return form either by mail or email to:
Fort Bend County Public Transportation, DBELO
301 Jackson Street, Richmond, TX 77469
Email: Transit@fortbendcountytx.gov

EXHIBIT C

Overall Goal and Methodology

FORT BEND COUNTY
PUBLIC TRANSPORTATION
DBE GOAL
FY2021 to FY2023

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Live Link to DBE Goal on Fort Bend County Website

https://www.fortbendcountytx.gov/government/departments-o-z/public-transportation/disadvantaged-business-enterprise-program/dbe-goal

INTRODUCTION

Fort Bend County Public Transportation (County) has completed their review of the federally funded contracting opportunities for Disadvantaged Business Enterprises for fiscal years 2021 through 2023.

According to US DOT regulations 49 CFR PART 26, the County is required to establish a Race-Neutral/Race-Conscious Disadvantaged Business Enterprise (DBE) goal program. This goal is based on projected contracting opportunities, the availability of eligible ready, willing, and able to work DBEs, as well as, past contracting achievement.

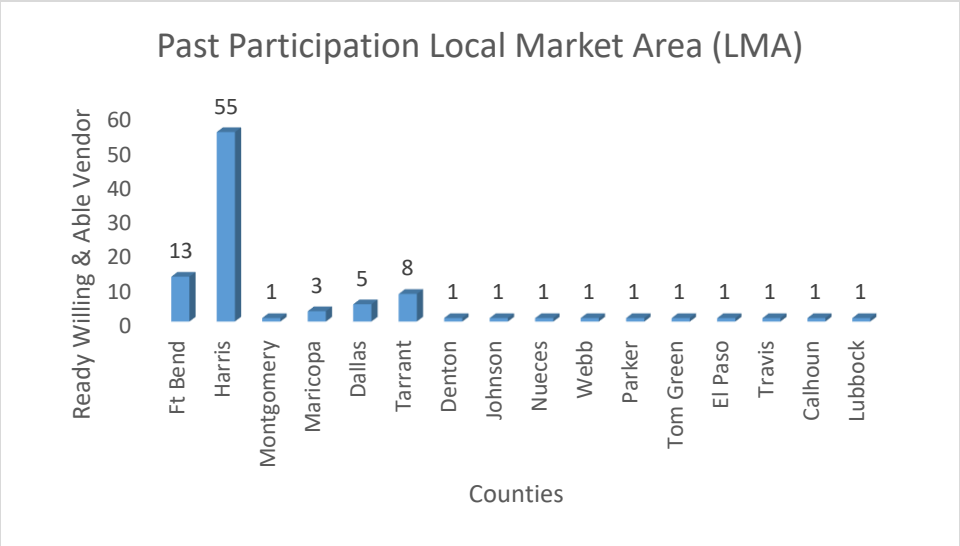
An overall agency goal of **3.89%** is proposed for contracting opportunities for the DBE program.

In February 2020, the President of the United States declared a public health emergency due to the Coronavirus (Covid-19) outbreak. In March 2020, Governor Greg Abbott, of Texas, declared a State of Disaster that resulted in the closure of all non-essential businesses. This measure was undertaken to help mitigate the spread of COVID-19 and protect the health and welfare of Texans. It is too soon to tell how much Covid-19 affected disadvantaged businesses and how it will affect the FY2021 through FY2023 DBE Goal. The County will monitor any impact the pandemic has on the goal.

ESTABLISHED BASE FIGURE

To calculate the weighted base figure, the relative availability of DBE contractors within the Local Market Area (LMA) was determined. The LMA is defined by the U.S. Department of Transportation's Office of Small and Disadvantaged Business Utilization's (OSDBU) as the area in which the substantial majority of the contractors and subcontractors with which your agency does business with are located, and the area in which your agency spends the substantial majority of contracting dollars. Based on that definition and past similar contracting services, the substantial majority of contractors and subcontractors that were ready, willing, and able were located in Fort Bend County and Harris County. **Graph 1** shows the LMA of past similar contracting services.

Graph 1: Local Market Area



The County used data from the following sources to identify the total number of available DBEs for each project.

- 2017 North American Industry Classification System(NAICS) Codes
  https://www.census.gov/eos/www/naics/
- United States Census Bureau County Business Patterns 2017 Fort Bend County & Harris County
  https://data.census.gov/cedsci/advanced?g=0500000US48157,48201&tid=ACSST1Y2018.S0101&vintage=2018
- Texas Unified Certification Program (TUCP) DBE Directory
  https://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?XID=8037&TN=txdot

The total number of firms and DBE firms available in both Fort Bend County and Harris County areas for these types of projects was determined from the NAICS code, Census Bureau County Business Pattern and the TUCP DBE directory. The data obtained from all firms and DBEs was used to calculate the relative availability using **Equation 1** below. **Table 1** shows the data for the relative availability for all projects.

Equation 1: Relative Availability for Each Project

$$Relative\ Availability = \frac{Ready.willing,and\ able\ DBEs}{All\ firms\ ready,willing,and\ able\ (including\ DBEs\ and\ non-DBEs)}$$

Table 1: Relative Availability for Each Project

No.	NAICS Code	Project	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability
1)	541611	Rail Study	212	1588	0.1335
2)	334310	ITS Project (Video Survellance, Mobile Ticketing)	0	3	0.0000
3)	238210		1	797	0.0013
4)	423690		0	239	0.0000
5)	454310	Bulk Fuel	0	13	0.0000
6)	238990	Construction Westpark P&R	22	422	0.0521
7)	236220	Construction Management	11	648	0.0170
8)	541310		1	340	0.0029
9)	541330		75	1676	0.0447
10)	541330	Material Testing	75	1676	0.0447
11)	541330	Engineering Design	75	1676	0.0447
12)	541310	Financial & Transportation Planning	1	340	0.0029
13)	541330		75	1676	0.0447
14)	541611		212	1588	0.1335
16)	541850	Bus Wraps	1	26	0.0385
17)	485111	Bus Service	0	6	0.0000
18)	424720		2	132	0.0152
19)	485113		0	6	0.0000
20)	541614	Ambassador Services	3	188	0.0160
21)	541690		9	622	0.0145
22)	541512	ITS Sofware Maintenance	6	1219	0.0049
23)	561621	Camera Maintainence	2	115	0.0174
24)	423840	Bus Wash Soap	3	347	0.0086
25)	812930	Park & Ride	2	266	0.0075
26)	541690	Pos-Award, Post Delivery & Bus Inspection Services	9	622	0.0145
27)	541613	Marketing	20	497	0.0402
28)	541820		4	61	0.0656
29)	541910		4	52	0.0769
				Overall availability of DBEs	**0.8420**

The project type was identified and the corresponding expected budget for the three years was added to calculate the weight for each project (See **Equation 2 & Table 2**). The County's only subrecipient is Gulf Coast Rail District (GCRD). During the FY2021 to FY2023 DBE goal period the County anticipates spending approximately $250,000 for GCRD to conduct rail study. The County excluded $7,582,230 for vehicle purchases. The vehicle purchase is reported to FTA through the vehicle award report within 30 days of creating the purchase order for each bus purchased.

Equation 2: Weight for Each Project

$$Weight = \frac{Each\ project\ amount\ of\ FTA\ assisted\ funds}{Total\ project\ amount\ of\ FTA\ assisted\ funds}$$

Table 2: Weight for Each Project

No.	NAICS Code	Project	Amount of FTA assisted funds on project:	% of total DOT funds (weight)
1)	541611	Rail Study	$250,000.00	0.0131
2)	334310	ITS Project (Video Survellance, Mobile Ticketing)	$300,000.00	0.0157
3)	238210			
4)	423690			
5)	454310	Bulk Fuel	$950,000.00	0.0497
6)	238990	Construction Westpark P&R	$2,418,423.65	0.1265
7)	236220	Construction Management	$343,496.14	0.0180
8)	541310			
9)	541330			
10)	541330	Material Testing	$50,000.00	0.0026
11)	541330	Engineering Design	$75,000.00	0.0039
12)	541310	Financial & Transportation Planning	$600,000.00	0.0314
13)	541330			
14)	541611			
16)	541850	Bus Wraps	$246,819.02	0.0129
17)	485111	Bus Service	$13,009,499.00	0.6803
18)	424720			
19)	485113			
20)	541614	Ambassador Services	$412,800.00	0.0216
21)	541690			
22)	541512	ITS Sofware Maintenance	$115,677.14	0.0060
23)	561621	Camera Maintainence	$35,239.80	0.0018
24)	423840	Bus Wash Soap	$11,280.00	0.0006
25)	812930	Park & Ride	$78,247.10	0.0041
26)	541690	Pos-Award, Post Delivery & Bus Inspection Services	$14,007.00	0.0007
27)	541613	Marketing	$211,500.00	0.0111
28)	541820			
29)	541910			
Total FTA assisted Project Funds			**$19,121,988.85**	**1**

According to OSDBU, the weighted based figure is not required by rule but it will make the goal calculation more accurate; See **Equation 3** for the formula used to calculate the Weighted Base Figure. The Total Weighted Base Figure is 2.91% (See **Table 3**).

Equation 3: Weighted Base Figure for Each Project

$$Weighted\ Base\ Figure = Relative\ Availability * Weight$$

Table 3: Total Weighted Base Figure

No.	NAICS Code	Project	Weight	Relative Availability	Weighted Base Figure
1)	541611	Rail Study	0.01307	0.13350	0.0017
2)	334310	ITS Project (Video Surveillance, Mobile Ticketing)	0.01569	0.00000	0.0000
3)	238210			0.00125	0.0000
4)	423690			0.00000	0.0000
5)	454310	Bulk Fuel	0.04968	0.00000	0.0000
6)	238990	Construction Westpark P&R	0.12647	0.05213	0.0066
7)	236220	Construction Management	0.01796	0.01698	0.0003
8)	541310			0.00294	0.0001
9)	541330			0.04475	0.0008
10)	541330	Material Testing	0.00261	0.04475	0.0001
11)	541330	Engineering Design	0.00392	0.04475	0.0002
12)	541310	Financial & Transportation Planning	0.03138	0.00294	0.0001
13)	541330			0.04475	0.0014
14)	541611			0.13350	0.0042
16)	541850	Bus Wraps	0.01291	0.03846	0.0005
17)	485111	Bus Service	0.68034	0.00000	0.0000
18)	424720			0.01515	0.0103
19)	485113			0.00000	0.0000
20)	541614	Ambassador Services	0.02159	0.01596	0.0003
21)	541690			0.01447	0.0003
22)	541512	ITS Sofware Maintenance	0.00605	0.00492	0.0000
23)	561621	Camera Maintainence	0.00184	0.01739	0.0000
24)	423840	Bus Wash Soap	0.00059	0.00865	0.0000
25)	812930	Park & Ride	0.00409	0.00752	0.0000
26)	541690	Pos-Award, Post Delivery & Bus Inspection Services	0.00073	0.01447	0.0000
27)	541613	Marketing	0.01106	0.04024	0.0004
28)	541820			0.06557	0.0007
29)	541910			0.07692	0.0009
				Total	0.0291
				Expressed as a %	**2.91%**

ADJUSTED GOAL

The County's adjusted DBE goal is based on past participation for fiscal years 2014 through 2019 due to the strong similarities of contracting opportunities between FY2014 – FY2019 and FY2021 – FY2023. Based on DBE participation for the six (6) fiscal years (See **Table 4**), a median of **4.87%** was determined (See **Equation 4**). The average of the Weighted Based Figure (See **Table 3**) and the Past Participation Goal was used to calculate the new adjusted goal for fiscal years 2021 through 2023 to be **3.89% (**See **Equation 5)**. The County consulted with the small business organizations listed in table 6 for information on past discrimination. None of the businesses that the County consulted with identified any past discrimination. The County were not able to find any disparity studies in our local market area.

Table 4: Past Participation DBE Goal

Fiscal Year	DBE % Goal	DBE % Achieved
2019	4	1.17
2018	4	0
2017	4	0.08
2016	7	9.66
2015	7	0.23
2014	6	9.42

Equation 4: Median Goal

$$\boldsymbol{Median = \frac{(0.08\% + 9.66\%)}{2} = 4.87\%}$$

Equation 5: Adjusted DBE Goal

$$\boldsymbol{Adjusted\ Goal = \frac{(Weighted\ Base\ Figure + Median\ Goal)}{2} = \frac{(2.91\% + 4.87\%)}{2} = 3.89\%}$$

RACE-NEUTRAL AND RACE-CONSCIOUS PARTICIPATION

The race-neutral attainment for the past six (6) fiscal years was examined to determine the maximum race-neutral participation. The calculation of the average race-neutral participation is determined with the median of race-neutral participation. The median is used instead of the average or mean because it excludes abnormally high or low numbers. The County used FY2016 achievement of 9.66% and FY2017 achievement of 0.08% to determine the median (See **Equations 4, 5 & Table 5**).

Table 5: DBE Goal vs. Achievement

Fiscal Year	DBE % Goal	DBE % Achieved
2019	4	1.17
2018	4	0
2017	4	0.08
2016	7	9.66
2015	7	0.23
2014	6	9.42

The County's method for determining the race-neutral and race-conscious portion is consistent with the guidelines in OSDBU *Tips for Goal-setting in the DBE program.* The recommendations are to increase the race-conscious portion of the annual goal to account for the proportion of previous years' goals that were

not met or increasing the race-neutral portion to account for exceeding goals. The County first determined the median as explained above in **Equation 4**, then determined the mean of the difference between the race-neutral achievement and goals for the two years used to calculate the median. The mean difference between achievement and goals for these two years was added to the race-neutral median to account for exceeding and not meeting race-neutral goals.

Equation 6: Race-Neutral Allocation

$$\boldsymbol{Race - Neutral\ Allocation = \frac{(FY2016\ Achievement + FY2017\ Achievement)}{2} + \frac{((FY2016\ Achievement - FY2016\ DBE\ Goal) + (FY2017\ Achievement - FY2017\ DBE\ Goal))}{2}}$$

$$= \frac{(9.66 + 0.08)}{2} + \frac{((9.66 - 7) + (0.08 - 4))}{2}$$

$$= 4.87 + \frac{(2.66 - 3.92)}{2}$$

$$= 4.87 + 0.63$$

$$= 4.24\%$$

Based on the results of the calculation in **Equation 6**. The County has determined that the DBE goal for FY2021 through FY2023 can be met at 100% race-neutral.

OUTREACH/CONSULTATION

The County hosted a DBE Goal webinar on June 24, 2020 followed by a survey. There was no comments received during the webinar. Partnering organizations were invited (See **Table 6**) and encouraged to extend the invitation to their network. Small businesses in our database were also invited to attend the webinar (See **Attachment A**). The webinar was used to consult with minority, women, general contractor groups, and community organizations to assist in the development of the DBE goal. On July 15, 2020, an email notification was sent to the partnering organization and small businesses to inform them that the goal was posted for public comments.

Table 6: The County Small Business Partnering Organization

Organization Name	Contact First Nam	Contact Last Name	Contact phone	Contact Email Address
HCCS	Veronica	Douglas	713-718-5278	veronica.douglas@hccs.edu
(City of Houston) Office of Business Opportunity	Marsha	Murray	832-393-0600	director.obo@houstontx.gov
Houston Minority Supplier Development Council	Ingrid	Robinson	713-271-7805	info@hmsdc.org
Houston Black Chamber of Commerce	Tiko	Reynolds-Hausman	713-660-8299	info@ghbcc.com
Houston Hispanic Chamber of Commerce	Carolina	Petriciolet	713-644-7070	info@houstonhispanicchamber.com
Fort Bend Chamber of Commerce	Stacy	Bynes	281-491-0800	info@fortbendcc.org

Houston Community College System (HCCS) is a viable partner in community outreach to small, disadvantaged and minority-owned businesses. HCCS' Small Business Development Program was created to provide opportunities for local small businesses to participate in contracting and procurement.

The City of Houston Office of Business Opportunity is an agency committed to promoting the growth and success of local small businesses, with special emphasis on historically underutilized groups by ensuring their meaningful participation in the government procurement process.

Houston Minority Supplier Development Council, established in 1973, is a non-profit organization for minority businesses helping them to grow their businesses successfully by providing necessary trainings, workshops, and certification programs.

Greater Houston Black Chamber of Commerce (GHBC), formerly the Negro Chamber of Commerce, was established in 1935. The GHBC continues to represent the interest and promote greater unity among the African-American business community.

Houston Hispanic Chamber of Commerce is the leading advocate for Hispanic business and civic interests in the Greater Houston area. Through its issue advocacy, its media platforms with an audience reach of more than 3 million people, and its robust membership network, the Chamber is the leading united voice for its members and all of the Hispanic Houston area.

Fort Bend Chamber of Commerce (FBCC) has, for over 40 years, fulfilled the mission to serve as the advocate for business excellence in Fort Bend County. With over 1,200 business members, the FBCC is comprised of local, national, and global; as well as small, medium, and large and Fortune 500 ranked businesses and organizations.

Attachment B includes the response to the survey. The survey results were analyzed and, based on the feedback, the County determined the results of the public consultation should be noted. However, analysis of the data determined that an adjustment of the base figure was not needed.

PUBLIC COMMENT

The public comment period was open for 45 days. It began July 15, 2020 and ended August 31, 2020. The County's DBE Goal, 3.89% for FY2021-2023 was published in the Fort Bend Independent (See **Attachment C**). In addition, the DBE Goal was also posted on the County's Public Transportation Department webpage (See **Attachment D**). During the 45 day comment period, the County did not receive any comments from the public, therefore, there was no adjustment to the proposed DBE Goal.

Attachment A

Small Business Invitees	
Heneco	Core Office Interiors
Transit Safety Solutions	Ridley's Vacuum
Visual Language Pro	RDLR
Stream Global IT	Dream-Signs
Mavich	Datavox
Reladyne	Debner
MCA	Logo Sign Studio
CS Acoustics	AVTG
Sunset Glass Tinting	Cummins Allison
Halford Busby	Genesis Signs
Two Way Signs	Suncoast Resources
Advanced MT	Lift N Store
BVI Resources USA	Westmatic
Two Way Signs	Safety-Kleen
Sylvester Garza	Go To Spectrum
Copr Out	Sign Ups and Banners
Zaxon USA	Vesta Rea & Associates
Claton Personnel	

Fort Bend County - Public Transportation Vendor Survey DBE Goal 2021-2023

SUMMARY → DESIGN SURVEY → PREVIEW & SCORE → COLLECT RESPONSES → ANALYZE RESULTS → PRESENT RESULTS

EXPORTS

PAID FEATURE
Export your survey data in .PDF, .XLS, .CSV, .PPTX, or SPSS format.

UPGRADE Learn more »

RESPONDENTS: 8 of 8

SAVE AS

QUESTION SUMMARIES | INSIGHTS AND DATA TRENDS | INDIVIDUAL RESPONSES

Respondent #7

COMPLETE

Edit | Delete | Export

Collector:	Email Invitation 1 (Email)
Started:	Friday, May 22, 2020 5:33:04 PM
Last Modified:	Friday, May 22, 2020 5:35:30 PM
Time Spent:	00:02:26
Email:	dericantony@gmail.com
IP Address:	143.111.84.203

Page 1

Q1
What is the name of your company?

Acute Care UM

Q2
Are you a Small Business?

Yes

Q3
What service(s) do you provide? (Please provide NAICS code(s) as applicable.)

621999

Q4
Are you a Certified DBE vendor? (If no, are you interested in becoming a DBE vendor?)

Yes, interested

Q5
Have you heard about Fort Bend County Public Transportation?

Yes

Q6
Have you experienced discrimination on any Fort Bend County Public Transportation federally assisted Solicitation? (If yes, please describe.)

N/A

Q7
Have you experienced any barrier(s) when bidding on a Fort Bend County Public Transportation Solicitation? (If yes, what were they?)

Not attempted bids yet

Q8
Is your business capable of performing work in the Houston/Fort Bend County area?

Yes

Q9
How does your company typically become aware of contracting opportunities?

Bid search on website

ENGLISH

EXPORTS

PAID FEATURE

Export your survey data in .PDF, .XLS, .CSV, .PPTX, or SPSS format.

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RESPONDENTS: 8 of 8

SAVE AS

QUESTION SUMMARIES INSIGHTS AND DATA TRENDS INDIVIDUAL RESPONSES

Respondent #2

COMPLETE

Edit Delete Export

Collector:	Email Invitation 1 (Email)
Started:	Tuesday, May 19, 2020 4:35:16 PM
Last Modified:	Tuesday, May 19, 2020 5:25:04 PM
Time Spent:	00:49:48
Email:	etackett@advancedmt.org
IP Address:	98.194.168.236

Page 1

Q1

What is the name of your company?

Advanced Medical Transportation LLC

Q2

Are you a Small Business?

Yes

Q3

What service(s) do you provide? (Please provide NAICS code(s) as applicable.)

Non-Emergency Medical Transportation, Alternate Route transportation for paratransit/ XL paratransit and individuals with intellectual disabilities (NAICS code 485991)

Q4

Are you a Certified DBE vendor? (If no, are you interested in becoming a DBE vendor?)

No. Yes, application submitted to Houston office

Q5

Have you heard about Fort Bend County Public Transportation?

Yes

Q6

Have you experienced discrimination on any Fort Bend County Public Transportation federally assisted Solicitation? (If yes, please describe.)

No.

Q7

Have you experienced any barrier(s) when bidding on a Fort Bend County Public Transportation Solicitation? (If yes, what were they?)

No

Q8

Is your business capable of performing work in the Houston/Fort Bend County area?

Yes

Q9

How does your company typically become aware of contracting opportunities?

Contracts and procurement on fortbendcontytx.gov - still new to finding bid opportunities. I wish their were a guide inplace to assist in the steps or directly where to locate bids aimed toward our business.

EXPORTS

PAID FEATURE

Export your survey data in .PDF, .XLS, .CSV, .PPTX, or SPSS format.

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RESPONDENTS: 8 of 8

SAVE AS

QUESTION SUMMARIES INSIGHTS AND DATA TRENDS INDIVIDUAL RESPONSES

Respondent #1

COMPLETE

Edit Delete Export

Collector:	Email Invitation 1 (Email)
Started:	Tuesday, May 19, 2020 4:33:09 PM
Last Modified:	Tuesday, May 19, 2020 4:37:07 PM
Time Spent:	00:03:57
Email:	lgomez@avtg.com
IP Address:	96.88.56.217

Page 1

Q1

What is the name of your company?

Acerra Technologies, Inc. (DBA: Audio Visual Technologies Group)

Q2

Are you a Small Business?

Yes

Q3

What service(s) do you provide? (Please provide NAICS code(s) as applicable.)

334310, 238210, 541512, 425110, 541330, 541511, 334111,

Q4

Are you a Certified DBE vendor? (If no, are you interested in becoming a DBE vendor?)

Yes

Q5

Have you heard about Fort Bend County Public Transportation?

Yes

Q6

Have you experienced discrimination on any Fort Bend County Public Transportation federally assisted Solicitation? (If yes, please describe.)

no

Q7

Have you experienced any barrier(s) when bidding on a Fort Bend County Public Transportation Solicitation? (If yes, what were they?)

no

Q8

Is your business capable of performing work in the Houston/Fort Bend County area?

Yes

Q9

How does your company typically become aware of contracting opportunities?

Bid notificatons via email or direct contact by county

EXPORTS

PAID FEATURE

Export your survey data in .PDF, .XLS, .CSV, .PPTX, or SPSS format.

UPGRADE Learn more »

RESPONDENTS: 8 of 8

SAVE AS

QUESTION SUMMARIES | INSIGHTS AND DATA TRENDS | INDIVIDUAL RESPONSES

Respondent #5

COMPLETE

Edit | Delete | Export

Collector:	Email Invitation 1 (Email)
Started:	Wednesday, May 20, 2020 9:55:46 AM
Last Modified:	Wednesday, May 20, 2020 9:59:42 AM
Time Spent:	00:03:55
Email:	sjordan@corpout.com
IP Address:	96.91.52.78

Page 1

Q1

What is the name of your company?

Corporate Outfitters

Q2

Are you a Small Business?

Yes

Q3

What service(s) do you provide? (Please provide NAICS code(s) as applicable.)

Office furniture, Moving Services, Repairs, Installation

Q4

Are you a Certified DBE vendor? (If no, are you interested in becoming a DBE vendor?)

NO. Yes, please share information

Q5

Have you heard about Fort Bend County Public Transportation?

Yes

Q6

Have you experienced discrimination on any Fort Bend County Public Transportation federally assisted Solicitation? (If yes, please describe.)

No

Q7

Have you experienced any barrier(s) when bidding on a Fort Bend County Public Transportation Solicitation? (If yes, what were they?)

No

Q8

Is your business capable of performing work in the Houston/Fort Bend County area?

Yes

Q9

How does your company typically become aware of contracting opportunities?

Email Bid Requests, Personal relationships

EXPORTS

PAID FEATURE

Export your survey data in .PDF, .XLS, .CSV, .PPTX, or SPSS format.

UPGRADE Learn more »

RESPONDENTS: 8 of 8

SAVE AS

QUESTION SUMMARIES | INSIGHTS AND DATA TRENDS | INDIVIDUAL RESPONSES

Respondent #3

COMPLETE

Edit | Delete | Export

Collector:	Email Invitation 1 (Email)
Started:	Tuesday, May 19, 2020 9:38:32 PM
Last Modified:	Tuesday, May 19, 2020 9:42:19 PM
Time Spent:	00:03:46
Email:	ehalford@halfordbusby.com
IP Address:	70.229.101.66

Page 1

Q1

What is the name of your company?

Halford Busby

Q2

Are you a Small Business?

Yes

Q3

What service(s) do you provide? (Please provide NAICS code(s) as applicable.)

541990, 236220, 541310, 541611, 237310, 237110

Q4

Are you a Certified DBE vendor? (If no, are you interested in becoming a DBE vendor?)

Yes

Q5

Have you heard about Fort Bend County Public Transportation?

No

Q6

Have you experienced discrimination on any Fort Bend County Public Transportation federally assisted Solicitation? (If yes, please describe.)

No

Q7

Have you experienced any barrier(s) when bidding on a Fort Bend County Public Transportation Solicitation? (If yes, what were they?)

No

Q8

Is your business capable of performing work in the Houston/Fort Bend County area?

Yes

Q9

How does your company typically become aware of contracting opportunities?

Notification from Architects

ENGLISH

Fort Bend County - Public Transportation Vendor Survey DBE Goal 2021-2023

EXPORTS

PAID FEATURE

Export your survey data in .PDF, .XLS, .CSV, .PPTX, or SPSS format.

UPGRADE Learn more »

RESPONDENTS: 8 of 8

SAVE AS

QUESTION SUMMARIES INSIGHTS AND DATA TRENDS INDIVIDUAL RESPONSES

Respondent #4

COMPLETE

Edit Delete Export

Collector: Email Invitation 1 (Email)
Started: Wednesday, May 20, 2020 9:51:07 AM
Last Modified: Wednesday, May 20, 2020 9:53:12 AM
Time Spent: 00:02:04
Email: crayton.nelson@reladyne.com
IP Address: 45.25.27.89

Page 1

Q1
What is the name of your company?

A.J.Hurt,Jr.,Inc. dba Reladyne

Q2
Are you a Small Business?

Respondent skipped this question

Q3
What service(s) do you provide? (Please provide NAICS code(s) as applicable.)

Respondent skipped this question

Q4
Are you a Certified DBE vendor? (If no, are you interested in becoming a DBE vendor?)

Respondent skipped this question

Q5
Have you heard about Fort Bend County Public Transportation?

Respondent skipped this question

Q6
Have you experienced discrimination on any Fort Bend County Public Transportation federally assisted Solicitation? (If yes, please describe.)

Respondent skipped this question

Q7
Have you experienced any barrier(s) when bidding on a Fort Bend County Public Transportation Solicitation? (If yes, what were they?)

no

Q8
Is your business capable of performing work in the Houston/Fort Bend County area?

Yes

Q9
How does your company typically become aware of contracting opportunities?

For Ft Bend County ,contacted by Purchasing

ENGLISH

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RESPONDENTS: 8 of 8

SAVE AS

QUESTION SUMMARIES | INSIGHTS AND DATA TRENDS | INDIVIDUAL RESPONSES

Respondent #6

COMPLETE

Edit | Delete | Export

Collector:	Email Invitation 1 (Email)
Started:	Friday, May 22, 2020 4:32:45 PM
Last Modified:	Friday, May 22, 2020 4:39:51 PM
Time Spent:	00:07:06
Email:	gzimmerman@ridleysonline.com
IP Address:	98.200.12.53

Page 1

Q1

What is the name of your company?

Ridley's Vacuum and Janitorial Supply

Q2

Are you a Small Business?

Yes

Q3

What service(s) do you provide? (Please provide NAICS code(s) as applicable.)

Janitorial supplies, cleaning chemicals, dispensing and dilution systems, cleaning equipment and service. Paper goods products and hand care products plus dispensers and free installation. Cleaning equipment sales and rental, on site maintenance service.

Q4

Are you a Certified DBE vendor? (If no, are you interested in becoming a DBE vendor?)

No

Q5

Have you heard about Fort Bend County Public Transportation?

Yes

Q6

Have you experienced discrimination on any Fort Bend County Public Transportation federally assisted Solicitation? (If yes, please describe.)

No

Q7

Have you experienced any barrier(s) when bidding on a Fort Bend County Public Transportation Solicitation? (If yes, what were they?)

No

Q8

Is your business capable of performing work in the Houston/Fort Bend County area?

Yes

Q9

How does your company typically become aware of contracting opportunities?

Business networking, announced RFQ and sales solicitation inquiries.

Public Participation Survey for DBE Goal Methodology FY2021-2023

SUMMARY → DESIGN SURVEY → PREVIEW & SCORE → COLLECT RESPONSES → ANALYZE RESULTS → PRESENT RESULTS

EXPORTS

PAID FEATURE

Export your survey data in .PDF, .XLS, .CSV, .PPTX, or SPSS format.

UPGRADE Learn more »

RESPONDENTS: 1 of 1

SAVE AS

QUESTION SUMMARIES | INSIGHTS AND DATA TRENDS | INDIVIDUAL RESPONSES

COMPLETE

Edit | Delete | Expor

Collector: Email Invitation 1 (Email)
Started: Monday, June 29, 2020 9:53:17 AM
Last Modified: Monday, June 29, 2020 10:04:42 AM
Time Spent: 00:11:25
Email: info@ghbcc.com
IP Address: 99.71.82.197

Page 1

Q1

What percentage of your members are qualified as a DBE firm in Texas?

Percentage

Enter Percentage Amount:
25

Q2

Based on the percentage of your members qualified as DBE firms, how many are interested (or have sought work) either as a Prime Contractor or a Subcontractor with Fort Bend Transit?

Not Sure

Q3

What percentage of your members who have not sought DBE certification, but may qualify, are interested in contracting or subcontracting opportunities with Fort Bend Transit?

Not Sure

Q4

Have any of your members reported any discrimination when responding to a federally funded Solicitation with Fort Bend Transit

No

Q5

Have any of your members reported any barriers when responding to a federally funded Solicitation with Fort Bend Transit?

No

Q6

Is there any feedback you would like to provide us that the questions above did not address?

No

ENGLISH

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McAfee SECURE

NEWS

Library's Podcast Club focuses on mysteries in July

The Podcast Club at Fort Bend County Libraries' University Branch Library will focus on "Mysteries" in July. Since the library buildings are currently not open to the public, the Podcast Club meeting will take place online via Zoom, so listeners throughout the area can participate from the comfort and safety of home.

Similar to a book club, the Podcast Club provides an opportunity for podcast listeners to get together to discuss podcast selections from a themed podcast-listening list and share their opinions on trending topics. Each month features a different theme, along with a short list of podcast episodes.

The next meeting of the University Branch Library Podcast Club will take place on Thursday, July 23, beginning at 7:00 pm. A link to the Zoom meeting will be emailed to all who register.

A direct link to the podcasts can be found on Fort Bend County Libraries' online calendar on the FBCL website. The playlist of podcasts from which to choose includes:

• "Detective Story" – Stuff to Blow Your Mind (1 hour, 5 minutes). Everyone loves a good whodunit, but why does the figure of the fictional detective tower so staggeringly over the modern world? He or she is a seeker of truth, a resolver of conflict, a subcultural liaison, and perhaps even a shaman for an increasingly secular world. Join Robert and Christian for a dive through the history, science, and cultural resonance of the detective story.

• "Halloween Special: The Mystery Show!" – Part-Time Genius (36 minutes). How did Agatha Christie churn out so many novels? Was Woodrow Wilson more important to the mystery genre than Sherlock Holmes? And what happened to Inspector Gadget's mustache (because he used to have one!) Hear about the mysteries of these mysteries!

• "Case #1 Video Store – Mystery Show (25 minutes). Laura becomes a member at a video store, rents a video, and attempts to return the video the next day, only to discover the store is completely gone. This episode of Mystery Show gets to the bottom of how a video store could close in one day.

• "The Creation of Sherlock Holmes" – The Art of Manliness (43 minutes). Sherlock Holmes is one of the most widely recognized figures of literature and pop culture. But how did the creator of Sherlock Holmes, Sir Arthur Conan Doyle, come up with a character who has become the universal archetype of the independent detective?

• "Could I Learn to Think Like Sherlock Holmes" – CrowdScience (34 minutes). Sir Arthur Conan Doyle's famous fictional detective is renowned for his feats of memory, his observational capacity, tireless energy, and an almost supernatural ability to solve the most perplexing crimes from seemingly unconnected facts. Does the way Sherlock Holmes solves mysteries go beyond fiction? What does science have to say about the matter? In this podcast, fact is pitted against fiction with a leading forensic expert and a sleep scientist, and presenter Marnie Chesterton puts herself to the test under the guidance of memory champion Simon Reinhard.

• "Episode 1: What We Know" – Limetown (33 minutes). In this fictional mystery, Lia Haddock is an investigative journalist with APR looking into the story of the disappearance of the town of Limetown. Episode 1 lays the groundwork and background details for an intriguing mystery series.

The Podcast Club is free and open to the public. Registration is required; a link to the Zoom meeting will be emailed to all who register. To register online at the library's website (www.fortbend.lib.tx.us), click on "Classes & Events," select "Virtual Programs," and find the program.

Participants may also register by calling the University Branch Library (281-633-5100).

Special education professor's guidance to parents concerned kids are regressing

Almost all parents of school-aged children have felt the stress of having to homeschool during the lockdown necessitated by the spread of the COVID-19 virus. But parents of children with special needs have been carrying an extra-heavy weight, concerned that their child's progress will stall or reverse as the quarantine has kept kids out of their routine for the last two months of school. University of Houston-Clear Lake's Associate Professor of Special Education Randy Seevers says their concerns about regression are real, but shares some helpful insights.

"All students regress during long vacations, even 'typical' children," Seevers said. "Students with special needs are not only regressing, they're losing the opportunity that they have, under normal circumstances, to learn new things. Right now, it's important to focus on maintaining the skills the student has already learned. We celebrate even very small changes with children with disabilities."

But, he added, each student's situation is unique. "Parents can be very hard on themselves because they want to do the right thing for their child," he said. "It's hard when you don't have the tools that a teacher has in the classroom. Parents should have reasonable expectations on themselves about what they can do with their child," he said. "Don't try to conquer the world. Your child's safety and wellbeing are priorities right now. Many children with disabilities also have some health risks. As a parent, you can only do so much and it's all right if you can't be everything to everyone at all times. Allow yourself to think a little smaller and be more reasonable."

As closures, quarantines and social distancing continue to take their toll on everyone, Seevers offered some additional tips to help parents of special needs children keep from becoming overwhelmed.

• Try to maintain a routine. Most children do well with structure; children with disabilities particularly so. Contact your child's school or daycare to find out about their typical daily routine. You might be able to recreate most of it at home, allowing your child to recoup a sense of normalcy and will also help with their transition back to school when the time comes.

• Find a worthwhile distraction that is encouraging and enriching. Music can be a powerful tool at home, especially if parents or kids are feeling stressed or anxious. A fun playlist can distract from a negative mood and lift the tension.

• Telehealth for mental health services is available. Check with therapists and other care providers about online services—they're out there.

• Create new goals that are more easily attainable for your child. If it takes your child a long time to get dressed, now is a good time to focus on that because you don't have to hurry-- the bus is not around the corner. For a child with disabilities, achieving life skills can be as important as academic skills.

• Stay in touch. You may be physically separated, but you can still be connected. Take this time to reach out by phone, by video call, or even by mail. Physical distance does not mean you have to lose your social connections.

•Keep reminding yourself that this quarantine will not last forever. The days might feel longer and the nights might not always bring much rest. But have faith, normal routines will return and your familiar support systems will be back in place. Hang in there!

For more information about UHCL's Special Education program, visit www.uhcl.edu/education/departments/counseling-special-education-diversity/special-education/

Fort Bend Transit
Disadvantaged Business Enterprise (DBE)
Goal & Methodology
FY 2021 – 2023 Goal

NOTICE OF PUBLIC COMMENT

Fort Bend County Public Transportation (County) has completed their review of the federally funded contracting opportunities for Disadvantaged Business Enterprises for fiscal years 2021 through 2023.

According to US DOT regulations 49 CFR PART 26, the County is required to establish a Race-Neutral/Race-Conscious Disadvantaged Business Enterprise (DBE) goal program. This goal is based on projected contracting opportunities, the availability of eligible ready, willing, and able to work DBEs and past contracting achievement.

An overall agency goal of 3.89% is proposed for contracting opportunities for the DBE program.

Please access the Fort Bend County website (www.fbctransit.org\Public Comment) for additional information on our Goal Methodology.

Fort Bend County provides the opportunity for public participation through inquiry and consultation with various contractor groups and community organizations.

Comments on the proposed overall goals are encouraged and will be used for informational purposes to develop the final established goal. The methodology used to determine the goal will be available for public inspection during normal business hours, Monday through Friday, at the Fort Bend Transit office at 3737 Bamore Road until August 17, 2020.

Comments will be accepted until August 31, 2020 at 5:00 pm. Comments must be submitted in writing to:

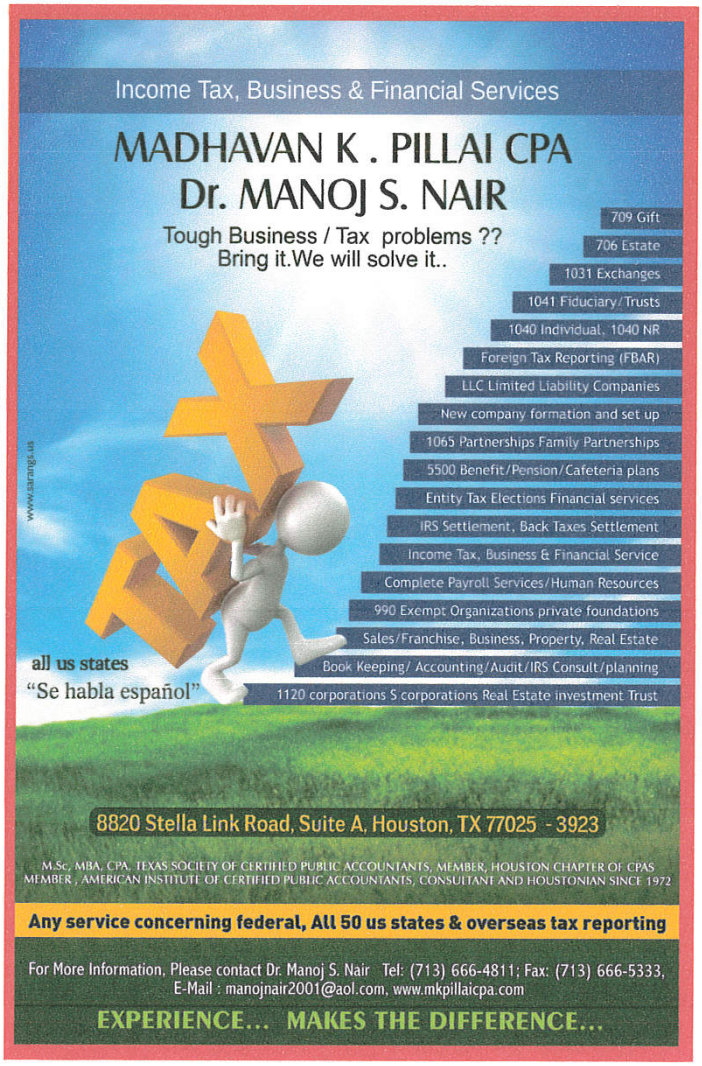
Disadvantaged Business Enterprise Liaison Officer (DBELO)
Fort Bend Transit
3737 Bamore Road
Rosenberg, TX 77471
Transit@fortbendcountytx.gov
281-633-7433

Visit the Google playstore & download your free mobile app for Fort Bend Independent.

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Seshadri Kumar — Publisher & Editor
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The CLA models solidify their place among AMG gateway models with additional performance equipment that starts with turbocharged handcrafted AMG four cylinder engine that has 382 hp and 354 lb.-ft. torque.

The AMG 35 offers five dynamic select driving modes that are Slippery, Comfort, [illegible] system.

With the new optional AMG steering wheel buttons, it quickly can switch driving modes while keeping hands on the wheel. This consists of a round controller with an integrated display beneath the right-hand steering-wheel spoke, plus two vertically positioned color display buttons with switches under [illegible] controlled.

The game-changer is Mercedes-Benz information system. It features a new user interface, natural speech recognition and touchscreen capabilities. More tech highlights include the dual screen display with touchscreen and available augmented video for navigation.

With the AMG menu the driver can call up various special displays such as gear display with yellow M symbol in manual mode; warm up menu – engine and transmission oil temperature; [illegible] my driveway came in at $62,855. But then there is a driver assistance package, an exterior lighting package, parking assistance package, multimedia package, AMG night package, performance package and a premium package. There is also AMG ride control, drive unit steering wheel buttons, multi-spoke wheels, track pace, rear side airbags, inductive wireless charging etc.

It is definitely a fun coupe to drive, has numerous bells and whistles, is fast so makes you want to drive it when you open your front door.

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FY 2021 – 2023 Goal
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Fort Bend Transit
3737 Bamore Road
Rosenberg, TX 77471
Transit@fortbendcountytx.gov
281-633-7433

Libraries offer Online Cookbook Club

Cooking enthusiasts of all ages and experience levels – from beginners to advanced –find Fort Bend County Libraries' two monthly Cookbook Book Clubs a great way to share ideas and discover new culinary tips. Different cooking genres are explored each month.

In August, the Cookbook Clubs will take place virtually, so that cooking enthusiasts around the area can enjoy and participate from the comfort and safety of home.

The University Branch Library's Culinary Book Club meets on the third Wednesday of every month, beginning at 1:30 pm.

The theme for the meeting on Wednesday, August 19, is "Breakfast Foods."

This activity will take place online in real time via Zoom. Registration is required; an email with a link for the Zoom session will be sent to all who register.

Share tips, get ideas, and enjoy the camaraderie of other individuals who have an interest in cooking and good cuisine!

The Mission Bend Branch Library's Food for Thought Cookbook Club normally meets on the third Thursday of every month, beginning at 1:00 pm.

The featured activity on Thursday, August 20, will be a pre-recorded video demonstrating how to make no-bake snacks.

A link to the video will be posted on FBCL's online calendar on the designated date, and it can be viewed at any time.

The meetings are free and open to the public. Registration is required for the Culinary Book Club so that a link to the Zoom session can be emailed to participants who register.

To register online at the library's website (www.fortbend.lib.tx.us), click on "Classes & Events," select "Virtual Programs," and find the program on the date indicated.

Participants may also

Fort Bend County
Public Transportation Department
PUBLIC NOTICE

These Programs of Projects will be funded with grant support from the United States Department of Transportation Section 5311 and Section 5307 of the Fixing America's Surface Transportation Act (FAST Act). This notice is to inform the public about the Program of Projects listed below.

The tables below describe our FY2020 Rural and Urban CARES Act funds project list:

Fort Bend County Public Transportation
FY2020 Section 5311 CARES Act Program of Projects

PROJECT	AMOUNT
Capital Cost of Contracting	57,626
ITS Software	1,800
Project Administration	50,272
Safety Equipment	17,448
Operating Assistance	372.934

Tuesday, September 1, 2020, at 1:00 p.m. for acceptance of the traffic control plan for Avenue E between Dulles Avenue and FM 1092, Precinct 2.

The hearing will be held in the Commissioners Courtroom at 401 Jackson Street, Second Floor, Richmond, Texas. You are invited to attend and state your approval or objection on this matter.

Submitted by,
Laura Richard
Fort Bend County Clerk

Tuesday, September 1, 2020, at 1:00 p.m. for acceptance of the traffic control plan for Willow Fork Groves Section 2, Precinct 3.

The hearing will be held in the Commissioners Courtroom at 401 Jackson Street, Second Floor, Richmond, Texas. You are invited to attend and state your approval or objection on this matter.

Submitted by,
Laura Richard
Fort Bend County Clerk

Fort Bend Transit
Disadvantaged Business Enterprise (DBE)
Goal & Methodology
FY 2021 – 2023 Goal

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Disadvantaged Business Enterprise Liaison Officer (DBELO)
Fort Bend Transit
3737 Bamore Road
Rosenberg, TX 77471
Transit@fortbendcountytx.gov
281-633-7433

missouri CITY

City of Missouri City

ORDINANCE NO. O-20-28

AN ORDINANCE OF THE CITY OF MISSOURI CITY, TEXAS, AMENDING CHAPTER 16, NAMING OF CITY PROPERTY AND CITY PROGRAMS, OF THE MISSOURI CITY CODE; REDUCING THE SIGNATURE THRESHOLD FOR REQUESTING EXISTING STREET NAME CHANGES; PROVIDING FOR REPEAL; PROVIDING A PENALTY; AND PROVIDING FOR SEVERABILITY.

I, Maria Jackson, City Secretary of the City of Missouri City, do hereby certify that the foregoing is a true and correct copy of the caption of said Ordinance No. O-20-28 approved on second and final reading by the City Council at its regular meeting held on August 3, 2020, as the same appears in the records of my office.

is 94.3, max cargo volume is 23.5 cubic feet with the rear seats up and 50.2 with the rear seats folded. Trailering capacity is 1,000 lbs.

The Encore GX has a wide, modern grille and 18-inch aluminum wheels. The Encore GX ST will have exclusive wheels, body-color surrounds and a black mesh grille with red accents connected through both the front and rear bumpers.

The functional interior is designed to carry both passengers and cargo, with 94.3 cubic feet for passengers and 25.3 cubic feet for cargo behind the second row. The Encore GX has an adjustable two-stage load floor.

For even more flexibility, the Encore GX's front passenger seat folds flat and the 40/60 folding second row is optimized with the narrower section behind the driver's seat to better accommodate an 8-foot long object diagonally from the passenger seat to the

CONSTABLE'S SALE

Notice is hereby Given, that by virtue of a certain ORDER OF SALE issued by the Clerk of the 268TH JUDICIAL DISTRICT Court of FORT BEND County, on the 26th day of JUNE, 2020, in a certain cause number 18-DCV-248269 wherein LAKES OF BELLA TERRA COMMUNITY ASSOCIATION, INC. plaintiff, and MINDI A. LITTLE defendant, in which cause a judgment was rendered on the 12TH day of OCTOBER, 2018, in favor of the said plaintiff LAKES OF BELLA TERRA COMMUNITY ASSOCIATION, INC. against said defendant MINDI A. LITTLE, for the sum of $2,713.82 TOGETHER WITH INTEREST THEREON AT THE RATE OF 5% PER ANNUM FROM THE DATE OF JUDGMENT UNTIL PAID; THE ADDITIONAL SUM OF $2,591.20 FOR ATTORNEY'S FEES; ALL COSTS OF COURT HEREIN EXPENDED AND RECOVER POST JUDGMENT INTEREST AT THE RATE OF 5% PER ANNUM ON THE FULL AMOUNT OF THE JUDGMENT AWARDED HEREIN FROM THE DATE HEREOF UNTIL PAID., AND THE FURTHER SUM OF $0.00, together with all costs of suit, I levied upon, and will, on the 1ST day of SEPTEMBER, 2020 within legal hours, proceed to sell for cash to the highest bidder, all the right, title and interest of MINDI A. LITTLE in and to the following described REAL property, levied upon as the property of MINDI A. LITTLE to wit:
PROPERTY DESCRIPTION:
LOT 32, BLOCK 1, LAKES OF BELLA TERRA SECTION 16, AN ADDITION IN FORT BEND COUNTY, TEXAS, ACCORDING TO THE MAP OR PLAT THEREOF RECORDED IN PLAT NO. 20120110 OF THE PLAT RECORDS OF FORT BEND COUNTY, TEXAS (THE "PROPERTY")

they head "back to school."

"Isolation can result in higher levels of anxiety or depression, as kids aren't able to engage with people they care about or in activities they value and enjoy," said Dr. Eric Storch, professor and vice chair of psychiatry and behavioral sciences and vice chair of psychology in the Menninger Department of Psychiatry and Behavioral Sciences at Baylor.

Lack of social interaction may diminish children's social skills.

They can forget how to interact with others effectively, which can be a challenge once they return to traditional school. Storch suggests children continue practicing social interactions with peers through video chat or getting involved in online activities and computer games with others. Parents and children can also role play social situations to practice social skills, such as introducing oneself.

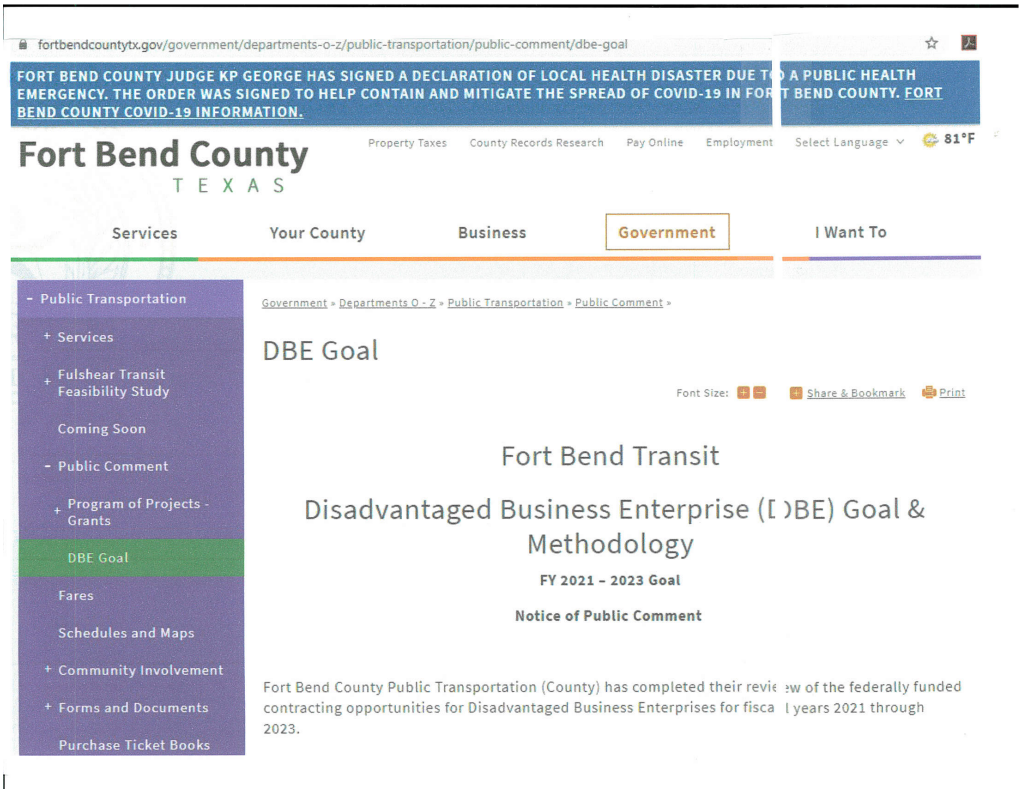
Staying connected through technology is one way to relieve the distress children experience during at-home learning. Spending time outdoors, exercising and playing sports throughout the school day also can help with feelings of anxiety surrounding isolation.

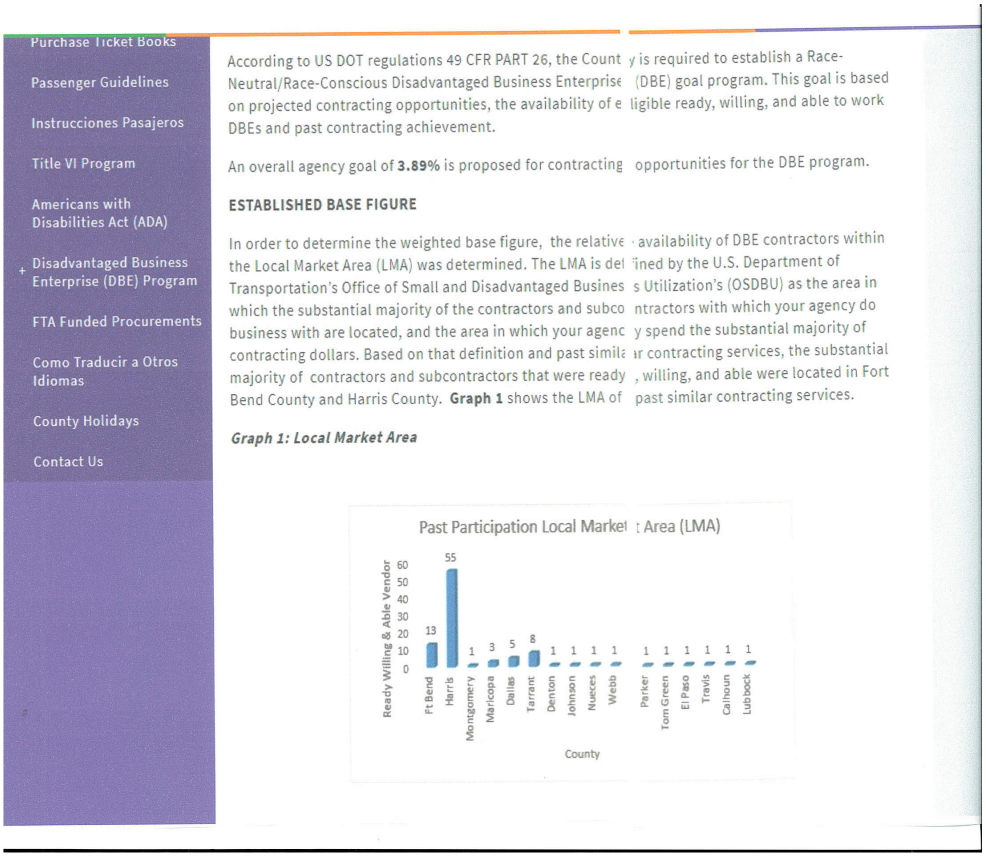
To relieve stress, parents can engage in meaningful activities with their children,

NOTICE OF SALE OF REAL PROPERTY

Notice is hereby given, that by virtue of a certain Order of Sale issued by the clerk of the 458TH District Court of Fort Bend County, Texas on June 12, 2020 in cause numbered 16-DCV-229200 styled Long Meadow Farms Community Assoc. Inc. vs. Linh-Kieu Lu and Frank Perez, in which a judgment was rendered on March 8, 2018 in favor of Long Meadow Farms Community Assoc. Inc. for the sum of Thirteen Thousand Six Hundred Twelve Dollars and Ninety Nine Cents ($13,612.99); plus fees for posting notice of sale, publishing, costs of suit rendered by the court, legal fees, and all costs of executing this Writ.
I have levied upon the below listed property on July 15, 2020 and will on September 1, 2020 Tuesday, between the

Attachment D
DBE Goal Posted on County's Website





Fort Bend County utilized the following data sources to identify the total number of available DBEs for each project.

- 2017 North American Industry Classification System(NAICS) Codes https://www.census.gov/eos/www/naics/
- United States Census Bureau County Business Patterns 2017 Fort Bend County & Harris County https://data.census.gov/cedsci/advanced?g=0500000US48157,48201&tid=ACSST1Y2018.S0101&vintage=2018
- Texas Unified Certification Program (TUCP) DBE Directoryhttps://txdot.txdotcms.com/FrontEnd/VendorSearchPublic.asp?XID=8037&TN=txdot

Utilizing NAICS code, Census Bureau County Business Pattern, and the TUCP DBE directory, the total number of all firms and DBE firms available in both Fort Bend County and Harris County areas for these types of projects was determined. The data obtained from all firms & DBEs were used to calculate the relative availability using **Equation 1** below. **Table 1** shows the data for the relative availability for all projects.

Equation 1: Relative Availability for Each Project

$$\textit{Relative Availability} = \frac{\textit{Ready. willing, and able DBEs}}{\textit{All firms ready, willing, and able (including DBEs and non} - \textit{DBEs)}}$$

Table 1: Relative Availability for Each Project

No.	NAICS Code	Project	Number of DBEs available to perform this work	Number of all firms available (including DBEs)	Relative Availability
1)	541611	Rail Study	212	1588	0.1335
2)	334310	ITS Project (Video Surveillance, Mobile Ticketing)	0	3	0.0000
3)	238210		1	797	0.0013
4)	423690		0	239	0.0000
5)	454310	Bulk Fuel	0	13	0.0000
6)	238990	Construction Westpark P&R	22	422	0.0521
7)	236220	Construction Management	11	648	0.0170
8)	541310		1	340	0.0029
9)	541330		75	1676	0.0447
10)	541330	Material Testing	75	1676	0.0447
11)	541330	Engineering Design	75	1676	0.0447
12)	541310	Financial & Transportation Planning	1	340	0.0029
13)	541330		75	1676	0.0447
14)	541611		212	1588	0.1335
16)	541850	Bus Wraps	1	26	0.0385
17)	485111	Bus Service	0	6	0.0000
18)	424720		2	132	0.0152
19)	485113		0	6	0.0000
20)	541614	Ambassador Services	3	188	0.0160
21)	541690		9	622	0.0145
22)	541512	ITS Software Maintenance	6	1219	0.0049
23)	561621	Camera Maintainence	2	115	0.0174
24)	423840	Bus Wash Soap	3	347	0.0086
25)	812930	Park & Ride	2	266	0.0075
26)	541690	Pos-Award, Post Delivery & Bus Inspection Services	9	622	0.0145
27)	541613	Marketing	20	497	0.0402
28)	541820		4	61	0.0656
29)	541910		4	52	0.0769
				Overall availability of DBEs	0.8420

The project type was identified and the corresponding expected budget for the three years was added to calculate the weight for each project (Reference **Equation 2 & Table 2**).

Equation 2: Weight for Each Project

$$\textit{Weight} = \frac{\textit{Each project amount of FTA assisted funds}}{\textit{Total project amount of FTA assisted funds}}$$

Table 2: Weight for Each Project

No.	NAICS Code	Project	Amount of FTA assisted funds on project:	% of total DOT funds (weight)
1)	541611	Rail Study	$250,000.00	0.0131
2)	334310	ITS Project (Video Surveillance, Mobile Ticketing)	$300,000.00	0.0157
3)	238210			
4)	423690			
5)	454310	Bulk Fuel	$950,000.00	0.0497
6)	238990	Construction Westpark P&R	$2,418,423.65	0.1265
7)	236220	Construction Management	$343,496.14	0.0180
8)	541310			
9)	541330			
10)	541330	Material Testing	$50,000.00	0.0026
11)	541330	Engineering Design	$75,000.00	0.0039
12)	541310	Financial & Transportation Planning	$600,000.00	0.0314
13)	541330			
14)	541611			
16)	541850	Bus Wraps	$246,819.02	0.0129
17)	485111	Bus Service	$13,009,499.00	0.6803
18)	424720			
19)	485113			
20)	541614	Ambassador Services	$412,800.00	0.0216
21)	541690			
22)	541512	ITS Sofware Maintenance	$115,677.14	0.0060
23)	561621	Camera Maintainence	$35,239.80	0.0018
24)	423840	Bus Wash Soap	$11,280.00	0.0006
25)	812930	Park & Ride	$78,247.10	0.0041
26)	541690	Pos-Award, Post Delivery & Bus Inspection Services	$14,007.00	0.0007
27)	541613	Marketing	$211,500.00	0.0111
28)	541820			
29)	541910			
Total FTA assisted Project Funds			**$19,121,988.85**	**1**

According to OSDBU, the weighted based figure is not required by the rule but it will make the goal calculation more accurate. To determine the weighted base figure **Equation 3** was used. The total weighted base figure is 2.91% (Reference **Table 3**).

Equation 3: Weighted Base Figure for Each Project

$$\textit{Weighted Base Figure} = \textit{Relative Availability} * \textit{Weight}$$

Table 3: Total Weighted Base Figure

No.	NAICS Code	Project	Weight	Relative Availability	Weighted Base Figure
1)	541611	Rail Study	0.01307	0.13350	0.0017
2)	334310	ITS Project (Video Surveillance, Mobile Ticketing)	0.01569	0.00000	0.0000
3)	238210			0.00125	0.0000
4)	423690			0.00000	0.0000
5)	454310	Bulk Fuel	0.04968	0.00000	0.0000
6)	238990	Construction Westpark P&R	0.12647	0.05213	0.0066
7)	236220	Construction Management	0.01796	0.01698	0.0003
8)	541310			0.00294	0.0001
9)	541330			0.04475	0.0008
10)	541330	Material Testing	0.00261	0.04475	0.0001
11)	541330	Engineering Design	0.00392	0.04475	0.0002
12)	541310	Financial & Transportation Planning	0.03138	0.00294	0.0001
13)	541330			0.04475	0.0014
14)	541611			0.13350	0.0042
16)	541850	Bus Wraps	0.01291	0.03846	0.0005
17)	485111	Bus Service	0.68034	0.00000	0.0000
18)	424720			0.01515	0.0103
19)	485113			0.00000	0.0000
20)	541614	Ambassador Services	0.02159	0.01596	0.0003
21)	541690			0.01447	0.0003
22)	541512	ITS Sofware Maintenance	0.00605	0.00492	0.0000
23)	561621	Camera Maintainence	0.00184	0.01739	0.0000
24)	423840	Bus Wash Soap	0.00059	0.00865	0.0000
25)	812930	Park & Ride	0.00409	0.00752	0.0000
26)	541690	Pos-Award, Post Delivery & Bus Inspection Services	0.00073	0.01447	0.0000
27)	541613	Marketing	0.01106	0.04024	0.0004
28)	541820			0.06557	0.0007
29)	541910			0.07692	0.0009
				Total	0.0291
				Expressed as a %	2.91%

ADJUSTED GOAL

Fort Bend County adjusted the DBE goal based on past participation. Past participation DBE goal for fiscal years 2014 through 2019 was utilized. Based on the goals for this six (6) year period (Reference **Table 4**), a median of **4.87%** (Reference **Equation 4**) was determined. Once the past participation goal of 4.87% was determined, the average of the weighted based figure (Reference **Table 3**) and the past participation goal was used to obtain the new adjusted goal for fiscal years 2021 through 2023 to be **3.89%** (see **Equation 4**).

Table 4: Past Participation DBE Goal

Fiscal Year	DBE % Achieved
2019	7.73
2018	0
2017	0.08
2016	9.66
2015	0.23
2014	9.42

Equation 4: Adjusted DBE Goal

$$Median = \frac{(0.08\% + 9.66\%)}{2} = 4.87\%$$

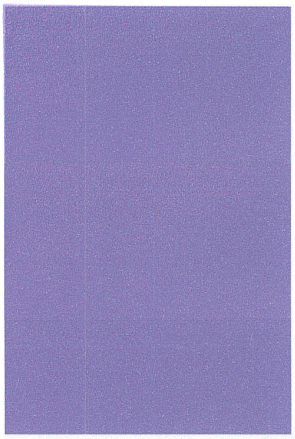
$$Adjusted\ Goal = \frac{(Weighted\ Base\ figure + Median\ Goal)}{2} = \frac{(2.91\% + 4.87\%)}{2} = 3.89\%$$

PUBLIC PARTICIPATION

Fort Bend County provides the opportunity for public participation through inquiry and consultation with various contractor groups and community organizations.

Comments on the proposed overall goals are encouraged and will be used for informational purposes to develop the final established goal. The methodology used to determine the goal will be available for public inspection during normal business hours, Monday through Friday, at the Fort Bend Transit office at 3737 Bamore Road until August 17, 2020.

Comments will be accepted until August 31, 2020 at 5:00 pm. Comments must be submitted in writing to:



Disadvantaged Business Enterprise Liaison Officer (DI BELO)

Fort Bend Transit

3737 Bamore Road

Rosenberg, TX 77471

Transit@fortbendcountytx.gov

281-633-7433

MAILING ADDRESS

301 Jackson St
Richmond, TX 77469

View on Google Maps

COUNTY MAIN NUMBER

Contact Us
P. 281-342-3411

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EXHIBIT D

Subcontractor Participation Form

Fort Bend County Public Transportation
Subcontractor/Subvendor Participation

Instructions: The Offeror/Prime Contractor shall complete this form by listing: Names of **all** subcontractors/subvendors proposed on this project, Status as a DBE or Non-DBE, $ or % amount of Total Prime Contract, Description of work to be performed/product to be provided, and Contact information. The subcontractors/subvendors listed on this form as DBEs must be currently certified under the Texas Unified Certification Program (TUCP) as a DBE (or will be at the time this solicitation is due). Additionally, for each DBE subcontractor/subvendor listed on this form, the Offeror/Prime Contractor must complete the Intent to Perform as a DBE Contractor or DBE Subcontractor/Subvendor Form agreeing to the information.

Name of Offeror/Prime Contractor: _____

Project Name: _____

IFB/RFP/RFQ Number: _____

1	**Name of Subcontractor/Subvendor**	**Phone Number**	**$/% Amt of Total Prime Contract**	**Work to be performed/product to be provided**
	Contact Person's Name	**Email Address**	**DBE or Non-DBE**	**Address**
2	**Name of Subcontractor/Subvendor**	**Phone Number**	**$/% Amt of Total Prime Contract**	**Work to be performed/product to be provided**
	Contact Person's Name	**Email Address**	**DBE or Non-DBE**	**Address**
3	**Name of Subcontractor/Subvendor**	**Phone Number**	**$/% Amt of Total Prime Contract**	**Work to be performed/product to be provided**
	Contact Person's Name	**Email Address**	**DBE or Non-DBE**	**Address**
4	**Name of Subcontractor/Subvendor**	**Phone Number**	**$/% Amt of Total Prime Contract**	**Work to be performed/product to be provided**
	Contact Person's Name	**Email Address**	**DBE or Non-DBE**	**Address**

Upon execution of a contract with Fort Bend County Public Transportation, the undersigned will enter into a formal agreement with DBE subcontractors/subvendors for work listed in this schedule. The undersigned agrees to the terms of this schedule by signing below and submitting the Intent to Perform as a DBE Contractor form (as completed by the DBE subcontractors/subvendors). If you are a DBE Offeror/Prime Contractor, you also certify that no more than 70% of the work for this project will be subcontracted.

_____ _____ _____

Printed Name of Authorized Representative of Offeror/Prime Contractor | Signature | Date Signed

EXHIBIT E

Intent to Perform as a DBE Contractor/Subcontractor Form

Fort Bend County Public Transportation
INTENT TO PERFORM AS A DBE CONTRACTOR OR DBE SUBCONTRACTOR/SUBVENDOR

A separate form should be completed for each DBE firm. (Offeror/Prime Contractor and/or Subcontractor/Subvendor)

Name of **Offeror/Prime Contractor**: _____

Name of Subcontractor/Subvendor: *(if applicable)* _____

Project Name: _____

IFB/RFP/RFQ Number: _____

1. The **DBE Offeror/Prime Contractor or DBE Subcontractor/Subvendor** *(whichever is applicable)* named above must be currently certified under the Texas Unified Certification Program (TUCP) as a DBE (or will be certified at the time this solicitation is due), and asserts that said qualification is met with the ethnic code: _____.

Ethnic Codes:			
A) Black American Male	B) Black American Female	C) Hispanic American Male	D) Hispanic American Female
E) Native American Male	F) Native American Female	G) Asian Pacific American Male	H) Asian Pacific American Female
I) SubContinent Asian American Male	J) SubContinent Asian American Female	K) Non Minority Female	

2. The **DBE Offeror/Prime Contractor or DBE Subcontractor/Subvendor** *(whichever is applicable)* named above is prepared to perform the following described work with their own workforce and/or supply the material listed in connection with the above project.

_____

This work will be performed at the following price $ _____ (and/or _____ % of the total prime contract amount).

(If this form is being completed relative to a Subcontractor/Subvendor, note that this amount should be the same $/% amount that is completed on the Subcontractor/Subvendor Participation Form.)

_____ _____ _____

Printed Name of Offeror/Prime Contractor Authorized Representative | Signature of Authorized Representative | Date Signed

---

Name of Firm that is DBE Certified (if different from Offeror/Prime Contractor): _____

(Subcontractor/Subvendor)

_____ _____ _____

Printed Name of Authorized Representative | Signature of Authorized Representative | Date Signed

Rev 1/4/2022

EXHIBIT F

DBE Certification Application

OMB APPROVAL NO:
2105-0510
Expiration Date: 10/31/2021

Appendix F

UNIFORM CERTIFICATION APPLICATION

DISADVANTAGED BUSINESS ENTERPRISE (DBE) / AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) 49 C.F.R. Parts 23 and 26

Roadmap for Applicants

1. Should I apply?

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed $23.98 million in gross annual receipts for DBE ($56.42 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

2. How do I apply?

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

3. Where can I send my application? [INSERT UCP PARTICIPATING MEMBER CONTACT INFORMATION]

4. Who will contact me about my application and what are the eligibility standards? A transportation agency in your state that performs certification functions will contact you. The agency is a member of a statewide Unified Certification Program (UCP), which is required by the U.S. Department of Transportation. The UCP is a one-stop certification program that eliminates the need for your firm to obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

5. Where can I find more information?

U.S. DOT—https://www.transportation.gov/civil-rights (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS): http://www.census.gov/eos/www/naics/ and http://www.sba.gov/content/table-small-business-size-standards.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 C.F.R. §26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 C.F.R. §23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

Under 49 C.F.R. §26.107, dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 2 C.F.R. Parts 180 and 1200, No procurement Suspension and Department, take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UNIFORM CERTIFICATION APPLICATION

NOTE: All participating firms must be for-profit enterprises. If your firm is not for profit, then you do NOT qualify for the DBE/ACDBE program and should not complete this application. If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

(1) Enter the contact name and title of the person completing this application and the person who will serve as your firm's contact for this application.
(2) Enter the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
(3) Enter the primary phone number of your firm.
(4) Enter a secondary phone number, if any.
(5) Enter your firm's fax number, if any.
(6) Enter the contact person's email address.
(7) Enter your firm's website addresses, if any.
(8) Enter the street address of the firm where its offices are physically located (not a P.O. Box).
(9) Enter the mailing address of your firm, if it is different from your firm's street address.

B. Prior/Other Certifications and Applications

(10) Check the appropriate box indicating whether your firm is currently certified in the DBE/ACDBE programs, and provide the name of the certifying agency that certified your firm. List the dates of any site visits conducted by your home state and any other states or UCP members. Also provide the names of state/UCP members that conducted the review.
(11) Indicate whether your firm or any firms owned by the persons listed has ever been denied certification as a DBE/ACDBE, 8(a), or Small Disadvantaged Business (SDB) firm, or state and local MBE/WBE firm. Indicate if the firm has ever been decertified from one of these programs. Indicate if the application was withdrawn or whether the firm was debarred, suspended, or otherwise had its bidding privileges denied or restricted by any state or local agency, or Federal entity. If your answer is yes, identify the name of the agency, and explain fully the nature of the action in the space provided. Indicate if you have ever appealed this decision to the Department and if so, attach a copy of USDOT's final agency decision(s).

Section 2: GENERAL INFORMATION

A. Business profile:

(1) Give a concise description of the firm's primary activities, the product(s) or services the company provides, or type of construction. If your company offers more than one product/service, list primary product or service first (attach additional sheets if necessary). This description may be used in our UCP online directory if you are certified as a DBE.
(2) If you know the appropriate NAICS Code for the line(s) of work you identified in your business profile, enter the codes in the space provided.
(3) State the date on which your firm was established as stated in your firm's Articles of Incorporation or charter.
(4) State the date each person became a firm owner.
(5) Check the appropriate box describing the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
(6) Check the appropriate box that indicates whether your firm is "for profit." **If you checked "No," then you do NOT qualify for the DBE/ACDBE program** and should not complete this application. All participating firms must be for-profit enterprises. Provide the Federal Tax ID number as stated on your firm's Federal tax return.
(7) Check the appropriate box that describes the type of legal business structure of your firm, as indicated in your firm's Articles of Incorporation or similar document. If you checked "Other," briefly explain in the space provided.
(8) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.
(9) Specify the firm's gross receipts for each of the past three years, as stated in your firm's filed Federal tax returns. You must submit complete copies of the firm's Federal tax returns for each year. If there are any affiliates or subsidiaries of the applicant firm or owners, you must provide these firms' gross receipts and submit complete copies of these firm(s) Federal tax returns. Affiliation is defined in 49 C.F.R. §26.5 and 13 C.F.R. Part 121.

B. Relationships and Dealings with Other Businesses

(1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, financing, or any office staff and/or employees with any other business, organization or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and fully explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or oral

agreement. Provide an explanation of any items shared with other firms in the space provided.

(2) Check the appropriate box indicating whether any other firm currently has or had an ownership interest in your firm at present or at any time in the past. If you checked yes, please explain.

(3) Check the appropriate box that indicates whether at present or at any time in the past your firm:

(a) ever existed under different ownership, a different type of ownership, or a different name;

(b) existed as a subsidiary of any other firm;

(c) existed as a partnership in which one or more of the partners are/were other firms;

(d) owned any percentage of any other firm; and

(e) had any subsidiaries of its own.

(f) served as a subcontractor with another firm constituting more than 25% of your firm's receipts.

If you answered "Yes" to any of the questions in (3)(a-f), you may be asked to explain the arrangement in detail.

Section 3: MAJORITY OWNER INFORMATION

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

A. Identify the majority owner of the firm holding 51% or more ownership interest

(1) Enter the full name of the owner.

(2) Enter his/her title or position within your firm.

(3) Give his/her home phone number.

(4) Enter his/her home (street) address.

(5) Indicate this owner's gender.

(6) Identify the owner's ethnic group membership. If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.

(7) Check the appropriate box to indicate whether this owner is a U.S. citizen or a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner.

(8) Enter the number of years during which this owner has been an owner of your firm.

(9) Indicate the percentage of the total ownership this person holds and the date acquired, including (if appropriate), the class of stock owned.

(10) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment. Describe how you acquired your business and attach documentation substantiating this investment.

B. Additional Owner Information

(1) Describe the familial relationship of this owner to each other owner of your firm and employees.

(2) Indicate whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function/title held in that business.

(3) (a) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has <u>any</u> relationship with your firm. If you checked "Yes," identify the name of the other business, the nature of the business relationship, and the owner's function at the firm.

(b) If the owner works for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week, please identify this activity.

(4) (a) Provide the personal net worth of the owner applying for certification in the space provided. Complete and attach the accompanying "Personal Net Worth Statement for DBE/ACDBE Program Eligibility" with your application. Note, complete this section and accompanying statement only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged).

(b) Check the appropriate box that indicates whether any trust has been created for the benefit of the disadvantaged owner(s). If you answered "Yes," you may be asked to provide a copy of the trust instrument.

(5) Check the appropriate to indicate whether any of your immediate family members, managers, or employees, own, manage, or are associated with another company. Immediate family member is defined in 49 C.F.R. §26.5. If you answered "Yes," provide the name of each person, your relationship to them, the name of the company, the type of business, and whether they own or manage the company.

Section 4: CONTROL

A. Identify the firm's Officers and Board of Directors

(1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer.

(2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.

(3) Check the appropriate box to indicate whether any of your firm's officers and/or directors listed above performs a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.

(4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. (e.g., ownership interest, shared office space, financial investments, equipment leases, personnel sharing, etc.) If you answered "Yes," identify the name of the firm, the individual's name, and the nature of his/her business relationship with that other firm.

B. Duties of Owners, Officers, Directors, Managers and Key Personnel

(1), (2) Specify the roles of the majority and minority owners, directors, officers, and managers, and key personnel who are responsible for the functions listed for the firm. Submit résumés for each owner and non-owner identified below. State the name of the individual, title, race

and gender and percentage ownership if any. Circle the frequency of each person's involvement as follows: "always, frequently, seldom, or never" in each area.

Indicate whether any of the persons listed in this section perform a management or supervisory function for any other business. Identify the person, business, and their title/function. Identify if any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investment, equipment, leases, personnel sharing, etc.) If you answered "Yes," describe the nature of his/her business relationship with that other firm.

C. Inventory: Indicate firm inventory in these categories:

(1) Equipment and Vehicles
State the make and model, and current dollar value of each piece of equipment and motor vehicle held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm or owner, whether it is used as collateral, and where this item is stored.

(2) Office Space
State the street address of each office space held and/or used by your firm. Indicate whether your firm or owner owns or leases the office space and the current dollar value of that property or its lease.

(3) Storage Space
State the street address of each storage space held and/or used by your firm. Indicate whether your firm or owner owns or leases the storage space and the current dollar value of that property or its lease. Provide a signed lease agreement for each property.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," you may be asked to explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial / Banking Information

State the name, City and State of your firm's bank. Identify the persons able to sign checks on this account. Provide bank authorization and signature cards.

Bonding Information. State your firm's bonding limits both aggregate and project limits.

F. Sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms guaranteeing the loan.

State the name and address of each source, the name of person securing the loan, original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm. Provide copies of signed loan agreements and security agreements

G. Contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. Current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and issuing State of the license or permit. Attach copies of licenses, license renewal forms, permits, and haul authority forms.

I. Largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. Largest active jobs on which your firm is currently working.
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

Section 5: AIRPORT CONCESSION (ACDBE) APPLICANTS

Complete the entries in this section if you are applying for ACDBE certification. Indicate in Section A if you operate a concession at the airport, and/or supply a good or service to an airport concessionaire. Indicate in Section B whether the applicant firm owns or operates any off-airport locations, providing the type of business, lease information, address/location, and annual gross receipts generated. Provide similar information in section C for any airport concession locations the firm currently owns or operates. If the applicant firm has any affiliates, provide the requested information in Section D. Indicate whether the ACDBE firm is participating in any joint ventures, and if so, include the original and any amended joint venture agreements.

AFFIDAVIT & SIGNATURE

The Affidavit of Certification must accompany your application. Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information I am applying for certification as ☐DBE ☐ACDBE

(1) Contact person and Title: _____ _____

(2) Legal name of firm: _____ _____

(3) Phone #: (___) _____ - _____ **(4) Other Phone #:** (____) _____ - _____ **(5) Fax #:** (____) _____ - _____

(6) E-mail: _____ **(7) Firm Websites:** _____

(8) Street address of firm *(No P.O. Box)*: _____ **City:** _____ **County/Parish:** _____ **State:** _____ **Zip**: _____ - ____

(9) Mailing address of firm (*if different*): _____ **City:** _____ **County/Parish:** _____ **State:** _____ **Zip:** _____ - ____

B. Prior/Other Certifications and Applications

(10) Is your firm currently certified for any of the following U.S. DOT programs?
❑ DBE ❑ ACDBE Names of certifying agencies: _____

⊗ If you are certified in your home state as a DBE/ACDBE, you do not have to complete this application for other states. Ask your state UCP about the interstate certification process.

List the dates of any site visits conducted by your home state and any other states or UCP members:

Date ___/ ___/___ State/UCP Member: _____ Date ___/ ___/___ State/UCP Member: _____

(11) Indicate whether the firm or any persons listed in this application have ever been:

(a) Denied certification or decertified as a DBE, ACDBE, 8(a), SDB, MBE/WBE firm? ❑ Yes ❑No
(b) Withdrawn an application for these programs, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? ❑ Yes ❑ No

If yes, explain the nature of the action. *(If you appealed the decision to DOT or another agency, attach a copy of the decision)*
_____
_____

Section 2: GENERAL INFORMATION

A. Business Profile: (1) Give a concise description of the firm's primary activities and the product(s) or service(s) it provides. If your company offers more than one product/service, list the primary product or service first. Please use additional paper if necessary. This description may be used in our database and the UCP online directory if you are certified as a DBE or ACDBE.
_____
_____
_____
_____

(2) Applicable NAICS Codes for this line of work include: _____ _____ _____ _____ _____ _____

(3) This firm was established on ___/____/____ **(4) I/We have owned this firm since:** ____/____/____

(5) **Method of acquisition** *(Check all that apply)*:

❑ Started new business ❑ Bought existing business❑ Inherited business ❑ Gifted
❑ Merger or consolidation ❑ Other *(explain)* _____

(6) **Is your firm "for profit"?** ❑Yes
Federal Tax ID#
_____

No→ ⊗ **STOP!** If your firm is NOT for-profit, then you do NOT qualify for this program and should not fill out this application.

(7) Type of Legal Business Structure: *(check all that apply)*:

❑ Sole Proprietorship
❑ Limited Liability Partnership
❑ Partnership❑Corporation
❑ Limited Liability Company❑ Other, Describe _____

(8) Number of employees: Full-time _____Part-time _____Seasonal _____Total _____
(Provide a list of employees, their job titles, and dates of employment, to your application).

(9) Specify the firm's gross receipts for the last 3 years. *(Submit complete copies of the firm's Federal tax returns for each year. If there are affiliates or subsidiaries of the applicant firm or owners, you must submit complete copies of these firms' Federal tax returns).*

Year _____ Gross Receipts of Applicant Firm $ _____ Gross Receipts of Affiliate Firms $_____
Year _____ Gross Receipts of Applicant Firm $_____Gross Receipts of Affiliate Firms $_____
Year _____ Gross Receipts of Applicant Firm $ _____ Gross Receipts of Affiliate Firms $_____

B. Relationships and Dealings with Other Businesses

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

If Yes, explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or oral agreement. Also detail the items shared

_____
_____
_____
_____
_____
_____
_____
_____
_____

(2) Has any other firm had an ownership interest in your firm at present or at any time in the past?
❑ Yes ❑ No If Yes, explain_____

(3) At present, or at any time in the past, has your firm:

(a) Ever existed under different ownership, a different type of ownership, or a different name? ❑ Yes ❑ No
(b) Existed as a subsidiary of any other firm? ❑ Yes ❑ No
(c) Existed as a partnership in which one or more of the partners are/were other firms? ❑ Yes ❑ No
(d) Owned any percentage of any other firm? ❑ Yes ❑ No
(e) Had any subsidiaries? ❑ Yes ❑ No
(f) Served as a subcontractor with another firm constituting more than 25% of your firm's receipts? ❑ Yes ❑ No

(If you answered "Yes" to any of the questions in (2) and/or (3)(a)-(f), you may be asked to provide further details and explain whether the arrangement continues).

Section 3: MAJORITY OWNER INFORMATION

A. Identify the majority owner of the firm holding 51% or more ownership interest.

(1) Full Name: _____

(2) Title: _____

(3) Home Phone #: ( ) _____ - _____

(4) Home Address (*Street and Number)*: _____

City: _____

State: _____

Zip: _____ - _____

(5) Gender: ❑ Male ❑ Female

(6) Ethnic group membership *(Check all that apply)*:

❑ Black
❑ Hispanic
❑ Asian Pacific
❑ Native American
❑ Subcontinent Asian
❑ Other (*specify*) _____

(7) U.S. Citizenship: ❑ U.S. Citizen
❑ Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____

(9) Percentage owned: _____%

Class of stock owned: _____ Date acquired _____

(10) Initial investment to acquire ownership interest in firm:

Type	Dollar Value
Cash	$ _____
Real Estate	$_____
Equipment	$_____
Other	$_____

Describe how you acquired your business:
❑ Started business myself.
❑ It was a gift from: _____
❑ I bought it from: _____
❑ I inherited it from: _____
❑ Other _____
(Attach documentation substantiating your investment)

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

_____
_____
_____

(2) Does this owner perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) ❑ Yes ❑ No
Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

_____
_____

(b) Does this owner work for any other firm, non-profit organization, or engage in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? $_____

(b)Has any trust been created for the benefit of this disadvantaged owner(s)? ❑ Yes ❑ No
(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ❑ Yes ❑ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage the company: *(Please attach extra sheets, if needed)*: _____

_____

Section 3: OWNER INFORMATION, Cont'd.

A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in the firm (*Attach separate sheets for each additional owner)*

(1) Full Name: _____

(2) Title: _____

(3) Home Phone #: ( ) _____ - _____

(4) Home Address (*Street and Number)*: _____

City: _____

State: _____

Zip: _____ - _____

(5) Gender: ❑ Male ❑ Female

(6) Ethnic group membership *(Check all that apply)*

❑ Black
❑ Hispanic
❑ Asian Pacific
❑ Native American
❑ Subcontinent Asian
❑ Other (*specify*) _____

(7) U.S. Citizenship:
❑ U.S. Citizen
❑ Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____

(9) Percentage owned: _____ %

Class of stock owned: _____ Date acquired _____

(10) Initial investment to acquire ownership interest in firm:

Type	Dollar Value
Cash	$ _____
Real Estate	$_____
Equipment	$ _____
Other	$ _____

Describe how you acquired your business:
❑ Started business myself.
❑ It was a gift from: _____
❑ I bought it from: _____
❑ I inherited it from: _____
❑ Other _____
(Attach documentation substantiating your investment)

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:
_____
_____
_____

(2) Does this owner perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) ❑ Yes ❑ No
Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:
_____

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? $_____

(b) Has any trust been created for the benefit of this disadvantaged owner(s)? ❑ Yes ❑ No
(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ❑ Yes ❑ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage: *(Please attach extra sheets, if needed)*: _____
_____

Section 4: CONTROL

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

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

(3) Do any of the persons listed above perform a management or supervisory function for any other business?
❑ Yes ❑ No If Yes, identify for each:

Person: _____ Title: _____
Business: _____ Function: _____

Person: _____ Title: _____
Business: _____ Function: _____

(4) Do any of the persons listed in section A above own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*)
❑ Yes ❑ No
If Yes, identify for each:

Firm Name: _____ Person: _____
Nature of Business Relationship: _____

B. Duties of Owners, Officers, Directors, Managers, and Key Personnel
1. Complete for all Owners who are responsible for the following functions of the firm *(Attach separate sheets as needed).*

A= Always **F = Frequently**	**S = Seldom** **N = Never**	Majority Owner (51% or more) Name: _____ Title: _____ Percent Owned: _____				Minority Owner (49% or less) Name: _____ Title: _____ Percent Owned: _____			
Sets policy for company direction/scope of operations		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑
Bidding and estimating		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑
Major purchasing decisions		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑
Marketing and sales		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑
Supervises field operations		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑
Attend bid opening and lettings		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑
Perform office management (billing, accounts receivable/payable, etc.)		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑
Hires and fires management staff		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑
Hire and fire field staff or crew		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑
Designates profits spending or investment		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑
Obligates business by contract/credit		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑
Purchase equipment		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑
Signs business checks		A ❑	F ❑	S ❑	N ❑	A ❑	F ❑	S ❑	N ❑

2. Complete for all Officers, Directors, Managers, and Key Personnel who are responsible for the following functions of the firm. *(Attach separate sheets as needed).*

A= Always S = Seldom **F = Frequently N = Never**	Officer/Director/Manager/Key Personnel Name: _____ Title: _____ Race and Gender:_____ Percent Owned: _____				Officer/Director/Manager/ Key Personnel Name: _____ Title: _____ Race and Gender:_____ Percent Owned: _____			
Sets policy for company direction/scope of operations	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Bidding and estimating	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Major purchasing decisions	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Marketing and sales	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Supervises field operations	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Attend bid opening and lettings	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Perform office management (billing, accounts receivable/payable, etc.)	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Hires and fires management staff	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Hire and fire field staff or crew	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Designates profits spending or investment	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Obligates business by contract/credit	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Purchase equipment	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐
Signs business checks	A ☐	F ☐	S ☐	N ☐	A ☐	F ☐	S ☐	N ☐

Do any of the persons listed in B1 or B2 perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function:

Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) If Yes, describe the nature of the business relationship:_____
_____

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

1. Equipment and Vehicles

Make and Model	**Current Value**	**Owned or Leased by Firm or Owner?**	**Used as collateral?**	**Where is item stored?**
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				

2. Office Space

Street Address	**Owned or Leased by Firm or Owner?**	**Current Value of Property or Lease**

3. Storage Space *(Provide signed lease agreements for the properties listed)*

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease

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

E. Financial/Banking Information *(Provide bank authorization and signature cards)*

Name of bank: _____ City and State: _____
The following individuals are able to sign checks on this account: _____

Name of bank: _____ City and State: _____
The following individuals are able to sign checks on this account: _____

Bonding Information: If you have bonding capacity, identify the firm's bonding aggregate and project limits:
Aggregate limit $ _____ Project limit $ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm including from financial institutions. Identify whether you the owner and any other person or firm loaned money to the applicant DBE/ACDBE. Include the names of any persons or firms guaranteeing the loan, if other than the listed owner. (*Provide copies of signed loan agreements and security agreements).*

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

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

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

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

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

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

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

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

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

Additional Information:

SECTION 5 - AIRPORT CONCESSION

(ACDBE APPLICANTS ONLY)

A. **I am applying for ACDBE certification to:** *(check all that apply)*

☐ **Operate a concession at an airport** ☐ **Supply a good or service to an airport concessionaire**

B. Does the applicant firm own/operate any off-airport locations? ☐ Yes ☐ No *If Yes,* identify *the following*

Type of Business (e.g., F&B, News & Gift, Retail, Duty Free, Advertising, etc.)	**Lease Term** (years)	**Lease Start Date**	**Address / Location**	**Annual Gross Receipts Generated**

C. Does the applicant firm currently own/operate any <u>airport</u> concession locations? ☐ Yes ☐ No *If Yes, supply the following information:*

Airport Name	**Concession Type** (e.g., F&B, News & Gift, Retail, Duty Free, Advertising, etc.)	**Number of Leases**	**Number of Locations**	**Annual Gross Receipts Generated**	**Lease Type** *(e.g. Direct Lease, Subcontract Management Agreement, etc. enter all that apply to the leases listed)*

D. Does the applicant firm have any affiliates? ☐ Yes ☐ No *If Yes, provide the following information concerning any locations owned/operated by affiliate firms.*

Airport Name	**Concession Type** (e.g., F&B, News & Gift, Retail, Duty Free, Advertising, etc.)	**Number of Leases**	**Number of Locations**	**Annual Gross Receipts Generated**	**Lease Type** *(e.g. Direct Lease, Subcontract Management Agreement, etc. enter all that apply to the leases listed)*

E. Is the ACDBE applicant firm a participant in any joint ventures? ☐ Yes ☐ No *If Yes, attach all original and any amended Joint Venture Agreements and any amendments to the agreements.*

AFFIDAVIT OF CERTIFICATION

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

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

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

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

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

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

I agree to provide written notice to the recipient agency or Unified Certification Program of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership changes, address/telephone number, personal net worth exceeding $1.32 million, etc.).

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

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

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

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

I further certify that my personal net worth does not exceed $1.32 million, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

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

Signature _____ _____
(DBE/ACDBE Applicant) (Date)

<u>NOTARY CERTIFICATE</u>

UNIFORM CERTIFICATION APPLICATION
SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following REQUIRED documents. A failure to supply any information requested by the UCP may result in your firm denied DBE/ACDBE certification.

Required Documents for All Applicants

 Résumés (that include places of employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
 Personal Net Worth Statement for each socially and economically disadvantaged owners who the applicant firm relies upon to satisfy the Regulation's 51% ownership requirement.
 Personal Federal tax returns for the past 3 years, if applicable, for each disadvantaged owner
 Federal tax returns (and requests for extensions) filed by the firm and its affiliates with related schedules, for the past 3 years.
 Documented proof of contributions used to acquire ownership for each owner (*e.g., both sides of cancelled checks*)
 Signed loan and security agreements, and bonding forms
 List of equipment and/or vehicles owned and leased including VIN numbers, copy of titles, proof of ownership, insurance cards for each vehicle.
 Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm
 Licenses, license renewal forms, permits, and haul authority forms
 Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
 Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past 2 years
 DBE/ACDBE and SBA 8(a), SDB, MBE/WBE certifications, denials, and/or decertification's, if applicable; and any U.S. DOT appeal decisions on these actions.
 Bank authorization and signatory cards
 Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
 List of all employees, job titles, and dates of employment.
 Proof of warehouse/storage facility ownership or lease arrangements

Partnership or Joint Venture

 Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

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

Optional Documents to Be Provided on Request

The certifying agency to which you are applying may require the submission of the following documents. If requested to provide these document, you must supply them with your application or at the on-site visit.

 Proof of citizenship
 Insurance agreements for each truck owned or operated by your firm
 Audited financial statements (if available)
 Trust agreements held by any owner claiming disadvantaged status
 Year-end balance sheets and income statements for the past 3 years (*or life of firm, if less than three years*)

Suppliers

 List of product lines carried and list of distribution equipment owned and/or leased

EXHIBIT G

Demonstration of Good Faith Efforts

Fort Bend County Public Transportation
Demonstration of Good Faith Efforts[1]

FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner (please check the appropriate space):

□ The bidder/offeror is committed to a minimum of ___% DBE utilization on this contract.

□ The bidder/offeror (if unable to meet the DBE goal of ___%) is committed to a minimum of ___% DBE utilization on this contract and submitted documentation demonstrating good faith efforts.

Name of Bidder/Offeror's firm: _____

State Registration No.: _____

Printed Name: _____

Signature: _____

Title: _____ Date: _____

[1] *Forms 1 and 2 will be provided as part of solicitation documents.*

Fort Bend County Public Transportation
Demonstration of Good Faith Efforts[2]

FORM 2: LETTER OF INTENT

Name of Bidder/Offeror's Firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Name of DBE firm: _____

Address: _____

City: _____ State: _____ Zip: _____

Phone Number: _____

Description of work to be performed by DBE firm:

_____

_____

_____

The bidder/offeror 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.

Printed Name: _____ Signature: _____

Title: _____ Date: _____

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.

[2] Must complete form for each DBE.

EXHIBIT H

Memorandum of Understanding with TxDOT

Texas Department of Transportation®
DEWITT C. GREER STATE HIGHWAY BLDG. • 125 E. 11TH STREET • AUSTIN, TEXAS 78701-2483 • (512) 463-8585

February 10, 2014

The Honorable Robert E. Hebert
Judge of Fort Bend County
401 Jackson
Richmond, TX 77469

Dear Judge Hebert:

The attached Memorandum of Understanding (MOU) regarding the adoption of the Texas Department of Transportation's federally-approved Disadvantaged Business Enterprise Program by the Fort Bend County has been fully executed.

Attached are two original copies of said MOU for your files.

Sincerely,

Gloria Brown

Gloria Brown
Business Development Section
Office of Civil Rights

MEMORANDUM OF UNDERSTANDING REGARDING THE ADOPTION OF THE TEXAS DEPARTMENT OF TRANSPORTATION'S FEDERALLY-APPROVED DISADVANTAGED BUSINESS ENTERPRISE PROGRAM BY Fort Bend County

This Memorandum of Understanding (MOU) is by and between the **TEXAS DEPARTMENT OF TRANSPORTATION (TxDOT),** an agency of the State of Texas; and Fort Bend County, a political subdivision of the State of Texas.

Whereas, from time to time Fort Bend County receives federal funds from the Federal Highway Administration (FHWA) through TxDOT to assist Fort Bend County with the construction and design of projects partially or wholly funded through FHWA; and

Whereas, Fort Bend County, as a sub-recipient of federal funds, is required by 49 CFR 26, to implement a program for disadvantaged business enterprises (DBEs), as defined by 49 CFR 26 (DBE Program); and

Whereas, TxDOT has implemented a Disadvantaged Business Enterprise Program (DBE Program) that is approved by the FHWA pursuant to 49 CFR part 26; and

Whereas, certain aspects of Fort Bend County 's procurement of construction and design services are subject to review and/or concurrence by TxDOT as a condition of receiving federal funds from FHWA through TxDOT; and

Whereas, Fort Bend County and TxDOT undertake substantially similar roadway construction projects and design projects and construct and design their respective projects using substantially the same pool of contractors; and

Whereas, Fort Bend County desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

Whereas, TxDOT and Fort Bend County find it appropriate to enter into this MOU to memorialize the obligations, expectations and rights each has as related to Fort Bend County 's adoption of the TxDOT DBE's Program to meet the federal requirements;

Now, therefore, TxDOT and Fort Bend County, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 CFR 26 and other applicable laws and regulations.

(2) Fort Bend County is a sub-recipient of federal assistance for construction projects and design projects and, in accordance with 49 CFR § 26.21, must comply with a federally approved DBE Program. The Fort Bend County receives its federal assistance through TxDOT. As a sub-recipient, Fort Bend County has the option of developing its own program or adopting and operating under TxDOT's federally approved DBE Program. The FHWA recommends that sub-recipients, such as Fort Bend County, adopt the DBE program, administered through TxDOT, and Fort Bend County by its prescribed protocol adopted the TxDOT DBE Program as of the date when adoption occurred.

(3) This MOU evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by Fort Bend County to achieve its DBE participation in federally assisted Construction and Design Projects.

(4) The parties will work together in good faith to assure effective and efficient implementation of the DBE Program for Fort Bend County and for TxDOT.

(5) Fort Bend County and TxDOT have agreed upon the following delegation of responsibilities and obligations in the administration of the DBE Program adopted by Fort Bend County :

(a) Fort Bend County will be responsible for project monitoring and data reporting to TxDOT. Fort Bend County will furnish to TxDOT any required DBE contractor compliance reports, documents or other information as may be required from time to time to comply with federal regulations. TxDOT will provide the necessary and appropriate reporting forms, to Fort Bend County .

(b) Fort Bend County will recommend contract-specific DBE goals consistent with TxDOT's DBE guidelines and in consideration of the local market, project size, and nature of the good(s) or service(s) to be acquired. Fort Bend County 's recommendation may be that no DBE goals are set on any particular project or portion of a project or that proposed DBE goals be modified. Fort Bend County and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority regarding DBE goals.

(c) TxDOT will cooperate with Fort Bend County in an effort to meet the timing and other requirements of Fort Bend County projects.

(d) Fort Bend County will be solely responsible for the solicitation and structuring of bids and bid documents to procure goods and services for its projects that use federal funds and will be responsible for all costs and expenses incurred in its procurements.

(e) The DBEs eligible to participate on TxDOT construction projects or design projects also will be eligible to participate on Fort Bend County construction projects or design projects subject to the DBE Program. The DBEs will be listed on TxDOT's website under the Texas Unified Certification Program (TUCP).

(f) Fort Bend County will conduct reviews and provide reports with recommendations to TxDOT concerning any DBE Program compliance issues that may arise due to project specific requirements such as Good Faith Effort (GFE), Commercially Useful Function (CUF), etc. Fort Bend County and TxDOT will work together to achieve a mutually acceptable goal, however, TxDOT will retain final decision-making authority on those issues and reserves the right to perform compliance reviews. Fort Bend County shall provide TxDOT with a listing of sanctions that will be assessed against contractors for violation of federal DBE regulations and its procedures for investigation of violations and assessment of sanctions for documented violations. Fort Bend County will require contractors for its FHWA federally assisted projects to use the attached forms as follows:

Attachment 1 – Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form SMS 4901

Attachment 2 – DBE Monthly Progress Report Form SMS 4903

Attachment 3 – DBE Final Report Form SMS 4904

Attachment 4 – Prompt Payment Certification Form (Federal-air Projects) 2177

(g) Fort Bend County will designate a liaison officer to coordinate efforts with TxDOT's DBE Program administrators and to respond to questions from the public and private sector regarding Fort Bend County 's administration of the DBE Program through TxDOT.

(h) Fort Bend County will be responsible for providing TxDOT with DBE project awards and DBE Commitments, monthly DBE reports, DBE Final Reports, DBE shortfall reports, and annual and updated goal analysis and reports.

(i) TxDOT will be responsible for maintaining a directory of firms eligible to participate in the DBE Program, and providing business development and outreach programs. Fort Bend County and TxDOT will work cooperatively to provide supportive services and outreach to DBE firms in Fort Bend County area.

(j) Fort Bend County will submit DBE semi-annual progress reports to TxDOT.

(k) Fort Bend County will participate in TxDOT sponsored training classes to include topics on Title VI of the Civil Rights Act of 1964, DBE Annual Goals, DBE Goal Setting for Construction Projects and Design Projects, DBE Contract Provisions, and DBE Contract Compliance, which may include issues such as DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on Fort Bend County projects in the DBE Education and Outreach Programs.

(l) The Executive Director of Fort Bend County will implement all federal requirements, including those stated in Attachments A through F, which are incorporated as though fully set out herein for all purposes.

(m) In accordance with 23 CFR 200.1, Fort Bend County shall develop procedures for the collection of statistical data (race, color, religion, sex, and national origin) of participants in , and beneficiaries of Sate highway programs, i.e., relocatees, impacted citizens and affected communities; develop a program to conduct Title VI review of program areas; and conduct annual reviews of special emphasis program areas to determine the effectiveness of program area activities at all levels. TxDOT, in accordance with federal law, may conduct compliance reviews by TxDOT's Office of Civil Rights (OCR).

(n) Fort Bend County will comply with 49 CFR 26.29 as stated in Attachment F.

(6) In the event there is a disagreement between TxDOT and Fort Bend County about the implementation of the TxDOT DBE Program by Fort Bend County the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible in consultation with FHWA. Non-compliance by Fort Bend County can result in restitution of federal funds to TxDOT and withholding of further federal funds upon consultation with FHWA.

(7) This MOU becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.

(8) If this MOU is terminated for any reason, Fort Bend County will be allowed reasonable time in which to seek approval from FHWA for an alternative DBE Program, without being deemed non- compliant with 49 CFR Part 26.

(9) This MOU applies only to projects for which Fort Bend County is a sub-recipient of federal funds through TxDOT. Fort Bend County may also implement a Minority and Women-Owned Small Business Enterprise (M/W/SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds through TxDOT and which are not subject to the TxDOT DBE Program. Fort Bend County may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs for its non-federally funded projects.

(10) The following attachments to this MOU are also incorporated as if fully set out herein for all purposes:

Attachment A – FHWA Memorandum HCR-1/HIF-1 (relating to access required by the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973);

Attachment B – SPECIAL PROVISION – LOCAL GOVERNMENT / RMA / NON-STANDARD CONTRACTS

Attachment C – 49 CFR §26.13 (contractual assurances)

Attachment D – DBE Program Compliance Guidance for Local Government Agencies

Attachment E – FHWA Form 1273

Attachment F – Texas Department of Transportation (TxDOT) Disadvantaged Business Enterprise (DBE) Program with attachments as follows:

- Attachment F1 – DBE Regulations: 49 CFR Part 26
- Attachment F2 – DBE Special Provisions 000-1966
- Attachment F3 – TxDOT's Organizational Chart
- Attachment F4 – Measurement and Payment Special Provision 009-007
- Attachment F5 – Texas Unified Certification Program (TUCP) DBE directory example and website address to the directory
- Attachment F6 – DBE Goal Methodology
- Attachment F7 – DBE Bidder Certification
- Attachment F8 – DBE Joint Check Approval Form
- Attachment F9 – TUCP Standard Operating Procedures (SOP)
- Attachment F10 – TUCP Memorandum of Agreement (MOA)
- Attachment F11 – Forms list

(11) The following procedure shall be observed by the parties in regard to any notifications:

(a) Any notice required or permitted to be given under this MOU shall be in writing and may be effected by personal delivery, by hand delivery through a courier or a delivery service, or by

registered or certified mail, postage prepaid, return receipt requested, addressed to the proper party, at the following address:

Fort Bend County

Robert E. Hebert
County Judge

Hand Delivery:

401 Jackson, Richmond, Tx 77469

Registered or Certified Mail (Return receipt requested):

401 Jackson, Richmond, Tx 77469

TEXAS DEPARTMENT OF TRANSPORTATION
DBE Liaison
Office of Civil Rights
Address: 125 E. 11th Street
Austin, Texas 78701

(b) Notice by personal delivery or hand delivery shall be deemed effective immediately upon delivery, provided notice is given as required by Paragraph (a) hereof. Notice by registered or certified mail shall be deemed effective three (3) days after deposit in a U.S. mailbox or U.S. Post Office, provided notice is given as required by Paragraph (a) hereof.

(c) Either party hereto may change its address by giving notice as provided herein.

(12) This MOU may be modified or amended only by written instrument, signed by both

Fort Bend County and the TxDOT and dated subsequent to the effective date(s) of this MOU. Except as authorized by the respective parties, no official, employee, agent, or representative of the parties has any authority, either express or implied, to modify or amend this MOU.

(13) The provisions of this MOU are severable. If any clause, sentence, provision, paragraph, or article of this MOU, or the application of this MOU to any person or circumstance is held by any court of competent jurisdiction to be invalid, illegal, or unenforceable for any reason, such invalidity, illegality, or unenforceability shall not impair, invalidate, nullify, or otherwise affect the remainder of this MOU, but the effect thereof shall be limited to the clause, sentence, provision, paragraph, or article so held to be invalid, illegal, or unenforceable, and the application of such clause, sentence, provision, paragraph, or article to other persons or circumstances shall not be affected; provided, however, Fort Bend County and TxDOT may mutually agree to terminate this MOU.

(14) The following provisions apply in regard to construction of this MOU:

(a) Words of any gender in this MOU shall be construed to include the other, and words in either number shall be construed to include the other, unless the context in this MOU clearly requires otherwise.

(b) When any period of time is stated in this MOU, the time shall be computed to exclude the first day and include the last day of the period. If the last day of any period falls on a Saturday, Sunday, or national holiday, or state or county holiday, these days shall be omitted from the computation. All hours stated in this MOU are stated in Central Standard Time or in Central Daylight Savings Time, as applicable.

(15) This MOU shall not be construed in any way as a waiver by the parties of any immunity from suit or liability that parties may have by operation of law, and the parties hereby retain all of their respective affirmative defenses.

EXECUTED in duplicate originals by TxDOT and Fort Bend County, acting through each duly authorized official and effective on the latest date signed.

The signatories below confirm that they have the authority to execute this MOU and bind their principles.

TEXAS DEPARTMENT OF TRANSPORTATION

By: James M Bass
James Bass
Executive Director (Interim)

Date: 2/5/14

Fort Bend County

By: Robert E. Hebert
Robert E. Hebert
County Judge

Date: January 7, 2014

Attachment 1

Texas Department of Transportation

Disadvantaged Business Enterprise (DBE) Program Commitment Agreement Form

Form SMS.4901
(Rev. 06/08)
Page 1 of 1

This commitment is subject to the award and receipt of a signed contract from the Texas Department of Transportation for the subject project.

Project #:	County:	Contract-CSJ:

Items of work to be performed (attach a list of work items if more room is required):

Bid Item #	Item Description	Unit of Measure	Unit Price	Quantity	Total Per Item
				Total	

The contractor certifies by signature on this agreement that subcontracts will be executed between the prime contractor and the DBE subcontractors as listed on the agreement form. If a DBE Subcontractor is unable to perform the work as listed on this agreement form, the prime contractor will follow the substitution/replacement approval process as outlined in the Contract DBE Special Provision.

IMPORTANT: The signatures of the prime contractor and the DBE, and the total commitment amount must always be on the same page.

Prime Contractor:	Name/Title (please print):
Address:	Signature:
Phone: Fax:	
E-mail:	Date:
DBE:	Name/Title (please print):
Vendor No.:	
Address:	Signature:
Phone: Fax:	
E-mail:	Date:
Subcontractor (if the DBE will be a second tier sub):	Name/Title (please print):
Address:	Signature:
Phone: Fax:	
E-mail:	Date:

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that we collect about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

To ensure prompt and efficient handling of your project file we are requesting that all commitments to be presented to the Office of Civil Rights, using this basic format.

Attachment 2

Texas Department of Transportation
DBE Monthly Progress Report

Form SMS 4903
(Rev 07/08)
Page 1 of 1

Project: _____ Contract CSJ: _____

County: _____ District: _____

Letting Date: _____ For Month of (Mo./Yr.): _____

Contractor: _____ Contract Amount: _____

DBE Goal: _____ % DBE Goal Dollars: _____

Vendor Number	Name of DBE Sub/Supplier	* RC or RN	** DBE $ Amt Paid for Work Performed this Period (X)	*** $ Amt Paid to Non-DBE 2nd Tier Subs and Haulers (Y)	Amt Paid to DBEs to Date (X-Y)	For TxDOT use Only

* Race Conscious or Race Neutral.

** Goal/commitment progress report amount and/or race-neutral amount. **Do not subtract** non-DBE second-tier subcontractors and haulers from this column.

*** Report amount of payment DBE subcontractors paid to non-DBE subcontractors/haulers.

If using a non-DBE hauling firm that leases from DBE truck owner-operators, payments made to each owner-operator must be reported separately.

Any changes to the DBE commitments approved by the department must be reported to the area engineer.

Submission of this report for periods of negative DBE activity is required. This report is required until all DBE subcontracting or material supply activity is completed.

I hereby certify that the above is a true and correct statement of the amounts paid to the DBE firms listed above.

Signature: _____ Date: _____
Company Official

This report must be sent to the area engineer's office within 15 days following the end of the calendar month.

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request to be informed about the information that is collected about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

Attachment 3

Texas Department of Transportation

DBE Final Report

Form SMS 4904
(Rev. 07/08)
Page 1 of 1

The DBE final report form should be filled out by the contractor and submitted to the appropriate district office upon completion of the project. One copy of the report must be submitted to the area engineer's office. The report should reflect all DBE activity on the project. The report will aid in expediting the final estimate for payment. If the DBE goal requirements were not met, documentation supporting good faith efforts must be submitted.

Project: _____ Contract CSJ: _____

County: _____ Control Project: _____

Letting Date: _____ DBE Goal: _____ %

Contractor: _____ Contract Amount: _____

Vendor number	Name of DBE Sub/Supplier	*RC or RN	** DBE goal – total $ amt pd to date	*** $ amt pd to non-DBE 2nd tier subs & haulers	For TxDOT Use Only

* Race Conscious or Race Neutral.

** Goal/commitment progress report amount and/or race-neutral amount. Do not subtract non-DBE second-tier subcontractors and haulers from this column.

*** DBE subcontractors paid to non-DBE subcontractors/haulers.

This is to certify that _____ % of the work was completed by Disadvantaged Business Enterprises as stated above.

By _____ Per: _____

Name of General Contractor Contractor's Signature

Subscribed and sworn to before me, this _____ day of _____, A.D. _____

_____ _____

Notary Public County

My commission expires: _____

The Texas Department of Transportation maintains the information collected through this form. With few exceptions, you are entitled on request, to be informed about the information that is collected about you. Under §§552.021 and 552.023 of the Texas Government Code, you also are entitled to receive and review the information. Under §559.004 of the Government Code, you are also entitled to have us correct information about you that is incorrect.

Attachment 4

Prompt Payment Certification
(Federal-Aid Projects)

Form 2177
(Rev. 7/2007)
(GSD-EPC)
Page 1 of 1

In accordance with the requirements of Article 6.e of the DBE special provision and the prompt payment clause under Article 9.6.B and related special provisions, submit this certification form to the Engineer prior to the end of the month following the month payments were received from the department and the month following the month when final acceptance occurred, at the end of the project. (Final submission may be made prior to final acceptance if all subcontractor work and supplier material furnished for the project is complete and the subcontractors and suppliers final payments have been made in full.) The Engineer may withhold payments or suspend work for failure to submit this form or provide prompt payment in accordance with the contract. This certification is applicable to materials the Contractor purchases to remain as part of the final project and to first tier subcontractors on the project and associated project specific locations. (Subcontractors and suppliers are to comply with the prompt payment requirements.)

Certification

"I certify that to the best of my knowledge and with the exception of those subcontractors or suppliers listed below, all subcontractors and suppliers have been paid in accordance with the contract (10 days after receiving payment for the work performed by the subcontractor) and that any retainage held on a subcontractor or supplier's work has been released within 10 days after satisfactory completion of all of the subcontractors' or suppliers' work."

Project Number: _____ CCSJ: _____

Estimate Period: _____ (Month) _____ (Year) or _____ (Final Subcontractor and Supplier Payment Date)

_____ (Signature) _____ (Title) _____ (Date)

Printed Name: _____

The following firms have not been paid for reasons listed:

Firm	* Reason for Non-Payment

*Only reasons based on dispute on subcontractor or supplier noncompliance may be accepted.

This certification is for the department's information only and does not place any obligations on the part of the department with regard to any part, including but not limited to, any subcontractor and Contractor's surety.

Clarification of FHWA's Oversight Role in Accessibility

Memorandum

U.S. Department of Transportation

Federal Highway Administration

Subject: **ACTION:** Clarification of FHWA's Oversight Role in Accessibility

Date: 9-12-06

From: Frederick D. Isler
Associate Administrator for Civil Rights
King W. Gee
Associate Administrator for Infrastructure

Reply to Attn of: HCR-1
HIF-1

To: Associate Administrators
Chief Counsel
Chief Financial Officer
Directors of Field Services
Resource Center Director and Operations Managers
Division Administrators
Federal Lands Highway Division Engineers

The Federal Highway Administration (FHWA) recognizes the need for the transportation system to be accessible to all users. The purpose of this memorandum is to clarify FHWA's role and responsibility to oversee compliance on pedestrian access required by the Americans with Disabilities Act of 1990 (ADA) and Section 504 of the Rehabilitation Act of 1973 (Section 504). Since 1978, FHWA has promoted accessible transportation systems through technical assistance and guidance on ADA and Section 504. In addition, accessibility improvements are eligible for Federal-aid funding.

The FHWA is responsible for implementation of pedestrian access requirements from the ADA and Section 504. This is accomplished through stewardship and oversight over all Federal, State, and local governmental agencies ("public agencies") that build and maintain highways and roadways, whether or not they use Federal funds on a particular project.

Policy

In February 2000, the FHWA issued a policy providing technical guidance to integrate facilities for pedestrians, including persons with disabilities, into the transportation infrastructure. The guidance can be found at www.fhwa.dot.gov/environment/bikeped/design.htm#d4.

The ADA and Section 504 do not require public agencies to provide pedestrian facilities. However, where pedestrian facilities exist they must be accessible. Furthermore, when public agencies construct improvements providing access for pedestrians, the completed project also must meet accessibility requirements for persons with disabilities to the maximum extent feasible.

Planning

Title 23 requires that long-range transportation plans and transportation improvement programs, in both statewide and metropolitan planning processes, provide for the development and integrated management and operation of accessible transportation systems and facilities.

Additionally, State DOTs and Metropolitan Planning Organizations (MPOs) must certify (at least biennially for State DOTs and annually for MPOs) that the transportation planning process is being carried out or conducted in accordance with all FHWA, Federal Transit Administration and other

applicable Federal statutory and regulatory requirements [see 23 CFR 450.220 and 23 CFR 450.334, respectively]. Further, 23 CFR 450.316(b)(3) requires the metropolitan planning process to identify actions necessary to comply with the ADA and Section 504.

Transition Plans

The ADA and Section 504 require State and local governments with 50 or more employees to perform a self-evaluation of their current services, policies, and practices that do not or may not meet ADA requirements. The public agency must develop a Transition Plan addressing these deficiencies. This plan assesses the needs of persons with disabilities, and then schedules the required pedestrian accessibility upgrades. The Transition Plan is to be updated periodically, with its needs reflected in the processes utilized by State DOTs, MPOs, and transit agencies to develop the Statewide Transportation Improvement Programs and metropolitan Transportation Improvement Programs.

Projects

Public agencies should work to meet accessibility requirements throughout the project delivery process. Issues surrounding pedestrian accessibility should be addressed at the earliest stage possible to reduce or prevent conflicts with other right-of-way, planning, environmental, and design considerations. This could include the acquisition of right-of-way and use of special plan details for specific locations to remove barriers. Projects requiring pedestrian accessibility include projects for new construction and projects altering existing street and highway facilities.

New Construction

All projects for new construction that provide pedestrian facilities must incorporate accessible pedestrian features to the extent technically feasible, without regard to cost. The development process should ensure accessibility requirements are incorporated in the project.

Alterations

Alterations shall incorporate accessibility improvements to existing pedestrian facilities to the extent that those improvements are in the scope of the project and are technically feasible, without regard to cost. Projects altering the usability of the roadway must incorporate accessible pedestrian improvements at the same time as the alterations to the roadway occur. See **Kinney v. Yerusalim**, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S.C. 1033 (1994). Alterations are changes to a facility in the public right-of-way that affect or could affect access, circulation, or use by persons with disabilities.

The FHWA has determined that alterations are projects that could affect the structure, grade, function, and use of the roadway. Alteration projects include reconstruction, major rehabilitation, structural resurfacing, widening, signal installation, pedestrian signal installation, and projects of similar scale and effect.

Maintenance

Maintenance activities are not considered alterations. Therefore, maintenance projects do not require simultaneous improvements to pedestrian accessibility under the ADA and Section 504. The U.S. Department of Justice (DOJ) and the courts consider maintenance activities to include filling potholes. The FHWA has determined that maintenance activities include actions that are intended to preserve the system, retard future deterioration, and maintain the functional condition of the roadway without increasing the structural capacity. Maintenance activities include, but are not limited to, thin surface overlays (nonstructural), joint repair, pavement patching (filling potholes), shoulder repair, signing, striping, minor signal upgrades, and repairs to drainage systems.

As part of maintenance operations, public agencies' standards and practices must ensure that the day-to-day operations keep the path of travel open and usable for persons with disabilities, throughout the year. This includes snow and debris removal, maintenance of pedestrian traffic in work zones, and correction of other disruptions. Identified accessibility needs should be noted and incorporated into the transition plan.

Accessibility Design Criteria for Sidewalks, Street Crossings, and Trails

Sidewalks and Street Crossings

Where sidewalks are provided, public agencies shall provide pedestrian access features such as continuous, unobstructed sidewalks, and curb cuts with detectable warnings at highway and street crossings. 28 CFR 35.151(c), referencing 28 CFR Part 36, App. A, ADA Accessibility Guidelines (ADAAG). The FHWA encourages the use of ADAAG standards. If pedestrian signals are provided, they must have a reasonable and consistent plan to be accessible to persons with visual disabilities.

Sidewalks and street crossings generally should use the guidelines the Access Board is proposing for public rights-of-way. The FHWA distributed an information memorandum on November 20, 2001, stating that ***Designing Sidewalks and Trails, Part II, Best Practices Design Guide*** can be used to design and construct accessible pedestrian facilities. This report provides information on how to implement the requirements of Title II of the ADA. *Designing Sidewalks and Trails for Access* is the most comprehensive report available for designing sidewalks and street crossings and contains compatible information on providing accessibility with information published by the Access Board in the ADAAG. This report can be found at www.fhwa.dot.gov/environment/sidewalk2.

When the Access Board completes guidelines for public rights-of-way and they are adopted by the United States Department of Transportation and DOJ as standards under the ADA and Section 504, they will supersede the currently used standards and criteria.

When Federal-aid highway program funds are used for parking facilities, or buildings such as transit facilities, rest areas, information centers, transportation museums, historic preservation projects, or other projects where pedestrians are expected, the project must meet the current applicable accessibility standards, whether or not the project is within the public right-of-way. The ADAAG includes special provisions for building alterations and for historic preservation projects.

Shared Use Paths and Trails

The design standards for shared use paths and trails are specific to the function of the path or trail:

- Shared use paths and pedestrian trails that function as sidewalks shall meet the same requirements as sidewalks. Where shared use paths and pedestrian trails cross highways or streets, the crossing also shall meet the same requirements as street crossings, including the provision of detectable warnings.

- Shared use paths and pedestrian trails that function as trails should meet the accessibility guidelines proposed in the Access Board's *Regulatory Negotiation Committee on Accessibility for Outdoor Developed Areas Final Report* found at www.access-board.gov/outdoor/outdoor-rec-rpt.htm. This report also has guidelines for Outdoor Recreation Access Routes (routes connecting accessible elements within a picnic area, camping area, or a designated trailhead).

- Recreational trails primarily designed and constructed for use by equestrians, mountain bicyclists, snowmobile users, or off-highway vehicle users, are exempt from accessibility requirements even though they have occasional pedestrian use.

Most trailside and trailhead structural facilities (parking areas, restrooms) must meet the ADAAG standards.

Technical Feasibility and Cost

When constructing a new transportation facility or altering an existing transportation facility, a public agency should consider what is included within the scope of the project. For elements that are within the scope of the project, the ADAAG provides that "Any features of a...facility that are being altered and can be made accessible shall be made accessible [i.e., made to conform with ADAAG] within the scope of the alteration." ADAAG 4.1.6(j). The only exception to this rule is where conformity with ADAAG is "technically infeasible," meaning that "existing structural conditions would require removing or altering a load-bearing member which is an essential part of the structural frame [e.g., in the case of a highway project, a bridge support]; or because other existing physical or site constraints prohibit modification of addition of elements, spaces, or features which are in full and strict compliance with the minimum requirements for new construction and which are necessary to provide accessibility." ADAAG 4.1.6(j).

Where making an alteration that meets accessibility requirements is technically infeasible, the public agency must ensure that the alteration provides accessibility to the "maximum extent feasible." If a public agency believes that full ADAAG compliance is technically infeasible, the public agency should document that the proposed solution to the problem meets the "maximum extent feasible" test. With respect to any element of an alteration that is within the scope of the project and is not technically infeasible, DOJ guidance provides that under ADAAG standards "cost is not a factor." DOJ Technical Assistance Manual for Title II of the ADA, II-6.3100(4). Consequently, if the accessibility improvement is technically feasible, the public agency must bear the cost of fully meeting ADAAG standards.

However, cost may be a factor in determining whether to undertake a stand-alone accessibility

improvement identified in a Transition Plan. For example, if an existing highway, not scheduled for an alteration, is listed in the public agency's Transition Plan as needing curb cuts, the public agency may consider costs that are "unduly burdensome." The test for being unduly burdensome is the proportion of the cost for accessibility improvements compared to the agency's overall budget, not simply the project cost.
If the project alters any aspect of the pedestrian route, it must be replaced with accessible facilities. Additional work outside of the scope and limits of the project altering a facility is at the discretion of the agency. However, any features not conforming to ADA requirements outside the project scope should be added to the Transition Plan.

FHWA Responsibilities

The FHWA is responsible for ensuring public agencies meet the requirements of the ADA and Section 504 for pedestrian access for persons with disabilities. Under DOJ regulations, FHWA divisions must work with their State DOTs, MPOs, and local public agencies to ensure ADA and Section 504 requirements are incorporated in all program activities for all projects within the public right-of-way regardless of funding source. Program activities include project planning, design, construction, and maintenance. Furthermore, FHWA is responsible for ensuring accessibility requirements for projects that are not within public right-of-way, but use funding through FHWA. This includes parking areas, information centers, buildings, shared use paths, and trails. Divisions have a legal responsibility to work with State agencies or other recipients to ensure ADA and Section 504 requirements are incorporated into all projects using funding through FHWA.
For all projects that use Federal funds as part of the financing arrangements, the division offices need to periodically:

- Review those projects, where they have oversight responsibilities, for accommodation of pedestrians. The divisions shall not approve Federal funding for projects that do not adequately provide pedestrian access for persons with disabilities where the project scope and limits include pedestrian facilities in the public right-of-way.

- Review the Stewardship Agreement to ensure pedestrian accessibility requirements are included, as appropriate.

- Review the State DOT, MPO, and/or local jurisdiction processes, procedures, guidelines, and/or policies that address ADA in transportation planning and programming processes and how accessibility commitments are addressed in transportation investment decisions.

- Assist transportation agencies in updating their Transition Plans. The United States Department of Transportation Section 504 regulation requires FHWA to monitor the compliance of the self-evaluation and Transition Plan of Federal-aid recipients (49 CFR 27.11). The ADA deadline for completing the accessibility improvements within the Transition Plan was in 1995. For those State and local governments that have not performed the self-evaluation and prepared a plan, it is critical that they complete the process.

- Encourage and facilitate training for FHWA personnel on accessible pedestrian features.

- Ensure pedestrian accessibility compliance through periodic program reviews of recipients' highway planning, design, and construction activities.

- In addition, the Federal Lands Highway Divisions should ensure that each direct Federal construction project fulfills both policy guidance on pedestrian access and meets the minimum ADA and Section 504 accessibility requirements.

For all highway, street and trail facilities, regardless of whether Federal funds are involved, the division offices need to:

- Perform onsite review of complaints about accessibility and report the findings of the review to HCR-1.

- Make presentations and offer training on pedestrian accessibility at meetings, conferences, etc.

- In contacts with State and local officials, encourage them to develop procedures for incorporating pedestrian accessibility into their projects.

Additional Information and Resources

A Web site with questions and answers concerning recurring issues, training opportunities, and background legal information on FHWA's responsibilities under the ADA and Section 504 is located at http://www.fhwa.dot.gov/civilrights/index.htm. This memorandum has been reviewed and approved by the U.S. Department of Transportation General Counsel as consistent with applicable disability law.

Questions concerning these obligations may be directed to:

- For Accessibility Policy: Candace Groudine, Bob Cosgrove, Office of Civil Rights
- For Design Standards: William A. Prosser, Office of Program Administration
- For Trails: Christopher Douwes, Office of Natural and Human Environment
- For Construction and Maintenance: Christopher Newman, Office of Asset Management
- For Legal: Lisa MacPhee, Office of the Chief Counsel





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Questions and Answers About ADA/Section 504

These questions and answers are presented to help FHWA and its State and local transportation department partners better understand roles and responsibilities to provide accessible transportation facilities under the Americans with Disabilities Act of 1990 (ADA) and the Rehabilitation Act of 1973 (Section 504). These questions and answers are derived from extensive experience and input from the FHWA Offices of Civil Rights, Infrastructure, Chief Counsel, and Planning, Environment, and Realty. Like all guidance material, these questions and answers are not, in themselves, legally binding and do not constitute regulations. These Q&As explain the FHWA's position on the implementation of the ADA and Section 504. These questions and answers have been reviewed and approved by the U.S. Department of Transportation General Counsel as consistent with applicable disability law.

The FHWA Offices of Civil Rights, Infrastructure, Chief Counsel, and Planning, Environment, and Realty developed these questions and answers and approved them as consistent with the language and intent of the ADA and Section 504. The questions and answers outlined in this document are to be applied to Federal, State, and local governmental agencies; hereafter called "public agencies" or "agencies."

Public Agencies covered by ADA and Section 504

1. What authority requires public agencies to make public right of way accessible for all pedestrians with disabilities?
2. What do these statutes require public agencies to do?
3. Does the ADA require public agencies to provide pedestrian facilities?
4. What is FHWA's responsibility for assuring access for persons with disabilities?
5. What public agencies must provide accessible pedestrian walkways for persons with disabilities?
6. Can a public agency make private individuals or businesses responsible for ADA and Section 504 mandated pedestrian access?
7. What United States Department of Justice (USDOJ) and United States Department of Transportation (USDOT) regulations govern accessibility requirements?
8. What is FHWA's authority to implement ADA and Section 504 requirements?
9. What is the public right of way?

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10. What authority requires public agencies to make transition plans?
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12. How does the transition plan relate to a public agency's transportation planning process?
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23. How does cost factor into a public agency's decision in its transition plan concerning which existing facilities must comply with ADA and Section 504 pedestrian access requirements?

24. For a new project planned outside of the transition plan, with ADA accessibility improvements required to make the facility readily accessible and useable by individuals with disabilities, can cost be a reason not to complete an ADA-required accessibility improvement?

25. For an alteration project planned outside of the transition plan, with ADA accessibility improvements required within the scope of the project, can cost be a reason to decide what ADA-required improvements will be completed?

26. What role does the "maximum extent feasible" standard play for ADA accessibility requirements in altered projects?

27. What should a public agency do when it does not control all of the public right of way required to provide access for persons with disabilities?

28. Can a public agency delay compliance with the ADA and Section 504 on alteration projects through a systematic approach to schedule projects?

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29. What are the elements of an accessible design?

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Criteria

33. What accessibility training is available?

34. Where is information on the criteria to be used in developing accessible facilities?

Public Agencies covered by ADA and Section 504

1. *What authority requires public agencies to make public right-of-way accessible for all pedestrians with disabilities?*
   Public rights-of-way and facilities are required to be accessible to persons with disabilities through the following statutes: Section 504 of the Rehabilitation Act of 1973 (Section 504) (29 U.S.C. §794) and Title II of the Americans with Disabilities Act of 1990 (ADA) (42 U.S.C. §§ 12131-12164). The laws work together to achieve this goal. (9-12-06)
2. *What do these statutes require public agencies to do?*
   These statutes prohibit public agencies from discriminating against persons with disabilities by excluding them from services, programs, or activities. These statutes mean that the agency must provide pedestrian access for persons with disabilities to the agency's streets and sidewalks, whenever a pedestrian facility

exists. Regulations implement this requirement by imposing standards for accessible features such as curb cuts, ramps, continuous sidewalks, and detectable warnings. (9-12-06)

3. *Does the ADA require public agencies to provide pedestrian facilities?*
No. However, when a public agency provides a pedestrian facility, it must be accessible to persons with disabilities to the extent technically feasible.

4. *What is FHWA's responsibility for assuring access for persons with disabilities?*
FHWA is responsible for ensuring access for persons with disabilities in four areas:

   1. For surface transportation projects under direct FHWA control (e.g., Federal Lands projects): FHWA is responsible for ensuring that project planning, design, construction, and operations adequately address pedestrian access for people who have disabilities.

   2. For Federally funded surface transportation projects that provide pedestrian facilities within the public right-of-way: FHWA is responsible for ensuring that the public agencies' project planning, design, and construction programs provide pedestrian access for persons with disabilities. FHWA-funded projects outside of the public right-of-way, such as Transportation Enhancement projects, must also adhere to these requirements.

   3. For pedestrian facilities within the public right-of-way, or any other FHWA enhancement project, regardless of funding source: FHWA is responsible for investigating complaints. 28 CFR §§ 35.170 – 35.190.

   4. FHWA should provide or encourage accessibility training for Federal, State, and local agencies and their contractors.

   FHWA does not have ADA oversight responsibilities for projects outside of the public right-of-way that do not use Federal surface transportation program funds. (9-12-06)

5. *What public agencies must provide accessible pedestrian walkways for persons with disabilities?*
All State and local governmental agencies must provide pedestrian access for persons with disabilities in compliance with ADA Title II. 42 U.S.C. §12131(1). Federal, State, and local governments must provide pedestrian access for persons with disabilities in compliance with Section 504 standards. 29 U.S.C. §794(a). (9-12-06)

6. *Can a public agency make private individuals or businesses responsible for ADA and Section 504 mandated pedestrian access?*
No. The public agency is responsible for providing access for persons with disabilities. Private entities with joint responsibility for a public right-of-way, such as a private tenant on public property, are responsible for accessibility for persons with disabilities on the public right-of-way under Title II of ADA. The lease or other document creating this legal relationship should commit the private party to ensuring accessibility. In addition, public/private partnership relationships for the public right-of-way retain accessibility obligations to persons with disabilities under Title II. If the private entity eventually takes over the right-of-way in its entirety, then the private entity becomes responsible for accessibility for persons with disabilities under the private entity's obligations under Title III of the ADA. (9-12-06)

7. *What United States Department of Justice (DOJ) and United States Department of Transportation (DOT) regulations govern accessibility requirements?*
The DOJ ADA regulation is 28 CFR Part 35. The DOT Section 504 regulation at 49 CFR Part 27 governs public agencies, with the ADA incorporated at 49 CFR §27.19. Additional regulations drafted specifically for recipients of the Federal Transit Administration are at 49 CFR Part 37. (9-12-06)

8. *What is FHWA's authority to implement ADA and Section 504 requirements?*
The DOJ regulations designate the DOT as the agency responsible for overseeing public agencies' compliance with the ADA. 28 CFR §35.190(b)(8). The DOT has delegated to the FHWA the responsibility to ensure ADA compliance in the public right-of-way and on projects using surface transportation funds. (9-12-06)

9. *What is the public right-of-way?*
The public right-of-way consists of everything between right-of-way limits, including travel lanes, medians, planting strips, sidewalks, and other facilities. (9-12-06)

Transition plans

10. *What authority requires public agencies to make transition plans?*
The ADA requires public agencies with more than 50 employees to make a transition plan. 28 CFR §35.150(d). (9-12-06)

11. *What should a transition plan include?*
The transition plan must include a schedule for providing access features, including curb ramps for walkways. 28 CFR §35.150(d)(2). The schedule should first provide for pedestrian access upgrades to State and local government offices and facilities, transportation, places of public accommodation, and employers, followed by walkways serving other areas. 28 CFR §35.150(d)(2). The transition plan should accomplish the following four tasks:
    1. identify physical obstacles in the public agency's facilities that limit the accessibility of its programs or activities to individuals with disabilities;
    2. describe in detail the methods that will be used to make the facilities accessible;
    3. specify the schedule for taking the steps necessary to upgrade pedestrian access to meet ADA and Section 504 requirements in each year following the transition plan; and
    4. indicate the official responsible for implementation of the plan. 28 CFR §35.150(d)(3). (9-12-06)
12. *How does the transition plan relate to a public agency's transportation planning process?*
The ADA transition plan is intended to identify system needs and integrate them with the State's planning process. The transition plan and its identified needs should be fully integrated into the public agency's Statewide Transportation Improvement Program (STIP) and metropolitan Transportation Improvement Program (TIP). Agencies should incorporate accessibility improvements into the transportation program on an ongoing basis in a variety of ways:
    1. Any construction project that is programmed must meet accessibility requirements when built.
    2. Accessibility improvements identified in the transition plan that are not within the scope of an alteration project should be incorporated into the overall transportation planning process. This can be accomplished through the development of stand-alone accessibility projects.
    3. As a means to identify ADA compliance needs, during scheduling maintenance activities, the agencies should identify ADA accessibility needs and incorporate them into the overall transportation planning process. (9-12-06)
13. *What public agencies must make a transition plan?*
The ADA requires any public agency with more than 50 employees to make a transition plan setting forth the steps necessary to make its facilities accessible to persons with disabilities. 28 CFR §35.150(d). (9-12-06)
14. *When should the FHWA review an agency's transition plan?*
DOT Section 504 regulation requires FHWA to monitor the compliance of the self-evaluation and transition plans of Federal-aid recipients (49 CFR §27.11). The FHWA Division offices should review pedestrian access compliance with the ADA and Section 504 as part of its routine oversight activities as defined in their stewardship plan. (9-12-06)
15. *When and how should a transition plan be updated?*
An agency's transition plan should have been completed by January 26, 1992, and should be based on updates of the self-evaluation conducted to comply with the requirements of Section 504. 28 CFR §35.105. The plan should be updated periodically to ensure the ongoing needs of the community continue to be met. The transition plan should be coordinated appropriately with the STIP and the TIP. Changes to the plan shall be made available to the public for comment. The public agency should specifically target any local community groups representing persons with disabilities for comment, to ensure that the agency is meeting the local priorities of the persons with disabilities in that community. If a public agency has never completed a transition plan, the Division should inform the public agency to complete a transition plan now and review that public agency's completed transition plan.
The ADA deadline for completing the improvements listed in the transition plans was January 26, 1995. For those State and localities that have not completed their self-evaluation and transition plans, it is critical that they complete this process. (9-12-06)

Projects Covered by the ADA and Section 504

16. *What projects must provide pedestrian access for persons with disabilities?*
Any project for construction or alteration of a facility that provides access to pedestrians must be made accessible to persons with disabilities. 42 U.S.C. §§ 12131 - 12134; 28 CFR §§ 35.150, 35.151; **Kinney v. Yerusalim**, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S. 1033 (1994). (9-12-06)
17. *What projects constitute an alteration to the public right-of-way?*
An alteration is a change to a facility in the public right-of-way that affects or could affect access, circulation, or use. Projects altering the use of the public right-of-way must incorporate pedestrian access improvements within the scope of the project to meet the requirements of the ADA and Section 504. These projects have the potential to affect the structure, grade, or use of the roadway. Alterations include items such as reconstruction, major rehabilitation, widening, resurfacing (e.g. structural overlays and mill and fill), signal

installation and upgrades, and projects of similar scale and effect. (9-12-06)

18. *What activities are not considered to be alterations?*
The DOJ does not consider maintenance activities, such as filling potholes, to be alterations. The DOJ does consider resurfacing beyond normal maintenance to be an alteration. DOJ's ADA Title II Technical Assistance Manual, § II-6.6000, 1993.
The FHWA has determined that maintenance activities include actions that are intended to preserve the system, retard future deterioration, and maintain the functional condition of the roadway without increasing the structural capacity. These activities include, but are not limited to, thin surface treatments (nonstructural), joint repair, pavement patching (filling potholes), shoulder repair, signing, striping, minor signal upgrades, and repairs to drainage systems. (9-12-06)

Timing of Accessibility Improvements

19. *Does a project altering a public right-of-way require simultaneous accessibility improvements?*
Yes. An alteration project must be planned, designed, and constructed so that the accessibility improvements within the scope of the project occur at the same time as the alteration. 29 CFR § 35.151; **Kinney v. Yerusalim**, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S. 1033 (1994).
The ADA does not stipulate how to perform simultaneous accessibility improvements. For example, a public agency may select specialty contractors to perform different specialized tasks prior to completion of the alteration project or concurrently with an ongoing project. (9-12-06)

20. *When does the scope of an alteration project trigger accessibility improvements for people with disabilities?*
The scope of an alteration project is determined by the extent the alteration project directly changes or affects the public right-of-way within the project limits. The public agency must improve the accessibility of only that portion of the public right-of-way changed or affected by the alteration. If a project resurfaces the street, for accessibility purposes the curbs and pavement at the pedestrian crosswalk are in the scope of the project, but the sidewalks are not. Any of the features disturbed by the construction must be replaced so that they are accessible. All remaining access improvements within the public right-of-way shall occur within the schedule provided in the public agency's planning process. (9-12-06)

21. *Do maintenance activities require simultaneous improvements of the facility to meet ADA standards?*
No. Maintenance activities do not require simultaneous improvements to pedestrian accessibility under the ADA and Section 504. However, in the development of the maintenance scope of work identified accessibility needs should be incorporated into the transition process. (9-12-06)

22. *When should accessible design elements be incorporated into projects in the public right-of-way?*
FHWA encourages the consideration of pedestrian needs in all construction, reconstruction, and rehabilitation projects. If a public agency provides pedestrian facilities, those facilities must be accessible to persons with disabilities. A public agency is not relieved of its obligation to make its pedestrian facilities accessible if no individual with a disability is known to live in a particular area. This is true regardless of its funding source. DOJ's ADA Title II Technical Assistance Manual, § II-5.1000, 1993. (9-12-06)

Cost

23. *How does cost factor into a public agency's decision in its transition plan concerning which existing facilities must comply with ADA and Section 504 pedestrian access requirements?*
For existing facilities requiring accessibility improvements as scheduled in the transition plans, the public agency must provide accessibility improvements unless the cost of the upgrades is unduly burdensome. The test for being unduly burdensome is the proportion of the cost for accessibility improvements compared to the agency's overall budget, not simply the project cost. 28 CFR Part 35, App. A, discussion at §35.150, ¶¶ 4 – 7. The decision that pedestrian access would be unduly burdensome must be made by the head of a public agency or that official's designee, accompanied by a written statement of the reasons for the decision. 28 CFR §35.150(a)(3). (9-12-06)

24. *For a new project planned outside of the transition plan, with ADA accessibility improvements required to make the facility readily accessible and useable by individuals with disabilities, can cost be a reason not to complete an ADA-required accessibility improvement?*
No. Cost may not be a reason to fail to construct or delay constructing a new facility so that the facility is readily accessible to and useable by persons with disabilities under the ADAAG standards. 28 CFR §35.151(a); see DOJ Technical Assistance Manual for Title II of the ADA, II-6.3100(3). (9-12-06)

25. *For an alteration project planned outside of the transition plan, with ADA accessibility improvements required within the scope of the project, can cost be a reason to decide what ADA-required improvements will be completed?*
No. Cost may not be a reason for a public entity to fail to complete an ADA-required improvement within the

scope of an alteration project under the ADAAG standards. A public agency must complete any ADA-required accessibility improvements within the scope of an alteration project to the maximum extent feasible. 28 CFR §35.151(b); DOJ Technical Assistance Manual for Title II of the ADA, II-6.3100(4). (9-12-06)

26. *What role does the "maximum extent feasible" standard play for ADA accessibility requirements in altered projects?*
In an alteration project, the public agency must incorporate the ADA accessibility standards to the maximum extent feasible. 28 CFR §35.151(b). The feasibility meant by this standard is physical possibility only. A public agency is exempt from meeting the ADA standards in the rare instance where physical terrain or site conditions restrict constructing or altering the facility to the standard. ADA Accessibility Guidelines 4.1.6(1)(j). Cost is not a factor in determining whether meeting standards has been completed to the maximum extent feasible. DOJ's ADA Title II Technical Assistance Manual, § II-6.3200(3)-(4), 1993. No particular decisionmaking process is required to determine that an accessibility improvement is not technically feasible, but the best practice is to document the decision to enable the public agency to explain the decision in any later compliance review. (9-12-06)

27. *What should a public agency do when it does not control all of the public right-of-way required to provide access for persons with disabilities?*
The public agency should work jointly with all others with interests in the highway, street, or walkway to ensure that pedestrian access improvements occur at the same time as any alteration or new project. The ADA encourages this cooperation by making each of the public agencies involved subject to complaints or lawsuits for failure to meet the ADA and Section 504 requirements. 28 CFR §§ 35.170 – 35.178. (9-12-06)

28. *Can a public agency delay compliance with the ADA and Section 504 on alteration projects through a systematic approach to schedule projects?*
No. All pedestrian access upgrades within the scope of the project must occur at the same time as the alteration. **Kinney v. Yerusalim**, 9 F.3d 1067 (3d Cir. 1993), cert. denied, 511 U.S. 1033 (1994). (9-12-06)

Elements of Accessible Design

29. *What are the elements of an accessible design?*
Public agencies have the choice of whether to follow the standards in the ADA Accessibility Guidelines (ADAAG) or the Uniform Federal Accessibility Standards (UFAS). 28 CFR §35.151(c); (appendix A to 28 CFR Part 36). FHWA encourages public agencies to use ADAAG. Under the ADAAG standards, an accessible design to a highway, street, or walkway includes accessible sidewalks and curb ramps with detectable warnings. 28 CFR §35.151(c) and (e) (curb ramps), ADAAG 4.3-4.5 (accessible routes), 4.7 (curb ramps with detectable warnings), 4.29 (detectable warnings). Continuously maintained sidewalks are required by the case of **Barden v. City of Sacramento**, 292 F.3d 1073 (9th Cir. 2002), cert. denied, 123 S.Ct. 2639 (2003). Accessible pedestrian signals and signs must be considered, with a reasonable and consistent plan to facilitate safe street crossings. 28 CFR §35.151(c); 23 U.S.C. §217(g)(2). (9-12-06)

Funding

30. *What sources of funding may be used to comply with ADA and Section 504 requirements?*

Federal Funding Opportunities for Pedestrian Projects and Programs

ACTIVITY	NHS	STP	HSIP	RHC	TE	CMAQ	RTP	FTA	TrE	BRI	402	PLA	TCSP	FLH	BYW	SRTS
Pedestrian plan		*	*			*						*	*			
Paved shoulders	*	*	*	*	*	*				*			*	*	*	
Shared-use path/trail	*	*	*		*	*	*			*			*	*	*	*

Recreational trail							*							*		
Spot improvement program		*	*		*	*							*			*
Maps		*			*	*					*		*			*
Trail/highway intersection	*	*	*		*	*	*						*	*	*	*
Sidewalks, new or retrofit	*	*	*	*	*	*		*	*	*			*	*	*	*
Crosswalks, new or retrofit	*	*	*	*	*	*		*	*				*	*	*	*
Signal improvements	*	*	*	*	*	*							*			*
Curb cuts and ramps	*	*	*	*	*	*							*			*
Traffic calming		*	*	*									*			*
Safety brochure/book		*			*	*					*		*			*
Training	*	*	*		*	*	*				*		*			*

NHS National Highway System

STP Surface Transportation Program

HSIP Highway Safety Improvement Program

RHC Railway-Highway Crossing Program

TrE Transit Enhancements

BRI Bridge (HBRRP)

402 State and Community Traffic Safety Program

PLA State/Metropolitan Planning Funds

TE Transportation Enhancement Activities	**TCSP** Transportation and Community and System Preservation Program
CMAQ Congestion Mitigation/Air Quality Program	**FLH** Federal Lands Highways Program
RTP Recreational Trails Program	**BYW** Scenic Byways
FTA Federal Transit Capital, Urban & Rural Funds	**SRTS** Safe Routes to School

32. Each program has its own specific requirements and provisions. Further details on these sources of funding may be found in the following memo: *Flexible Funding for Highways and Transit and Funding for Bicycle & Pedestrian Programs,* February 6, 2006, at www.fhwa.dot.gov/hep/flexfund.htm. (9-12-06)

Maintenance

31. *What obligation does a public agency have regarding snow removal in its walkways?*
A public agency must maintain its walkways in an accessible condition, with only isolated or temporary interruptions in accessibility. 28 CFR §35.133. Part of this maintenance obligation includes reasonable snow removal efforts. (9-12-06)

32. *What day-to-day maintenance is a public agency responsible for under the ADA?*
As part of maintenance operations, public agencies' standards and practices must ensure that the day-to-day operations keep the path of travel on pedestrian facilities open and usable for persons with disabilities, throughout the year. This includes snow removal, as noted above, as well as debris removal, maintenance of accessible pedestrian walkways in work zones, and correction of other disruptions. ADAAG 4.1.1(4). Identified accessibility needs should be noted and incorporated into the transition plan. (9-12-06)

Criteria

33. *What accessibility training is available?*
FHWA has the following training courses available:
    1. National Highway Institute: Pedestrian Facility Design, Course Number 142045. See www.nhi.fhwa.dot.gov/training/brows_catalog.aspx, and search for Course 142045.
    2. Association of Pedestrian and Bicycle Professionals/FHWA: Designing Pedestrian Facilities for Accessibility. See www.apbp.org or contact: Judy Paul at 609-249-0020.
    3. Resource Center Civil Rights Team: Designing Pedestrian Facilities for Accessibility. Contact: Deborah Johnson at 410-962-0089.

34. *Where is information on the criteria to be used in developing accessible facilities?*
The following list of documents contains resources from several agencies and organizations
US Access Board: The Access Board is the Federal agency responsible for developing ADA design standards. The following publications on accessible pedestrian design are available on the Board's Web site at www.access-board.gov:

- Accessibility Guidelines (ADAAG)
- Notice of Availability of Draft Public Rights-of-Way Guidelines
- Accessibility Guidelines Accessible Public Rights-of-Way Design Guide
- Pedestrian Access to Roundabouts
- Detectable Warnings: Synthesis of US and International Practice
- Accessible Pedestrian Signals
- Advisory Committee Report: *Building a True Community*
- Accessible Public Rights-of-Way

- Interfacing Accessible Pedestrian Signals and Traffic Signal
- Controllers

Call 1-800-872-2253, 1-800-993-2822 (TDD) to order the US Access Board Video, *Accessible Sidewalks: Design Issues for Pedestrians with Disabilities*

- Program 1: Pedestrians who use wheelchairs
- Program 2: Pedestrians who have ambulatory impairments
- Program 3: Pedestrians who have low vision
- Program 4: Pedestrians who are blind

The Federal Highway Administration: Pedestrian documents and reports are available at www.fhwa.dot.gov/environment/bikeped/publications.htm. A bicycle and pedestrian publications order form is at www.fhwa.dot.gov/environment/bikeped/order.htm.
Research and best practices design publications on pedestrian accessibility:

- *Designing Sidewalks and Trails for Access, Part I, A Review of Existing Guidelines,* www.fhwa.dot.gov/environment/sidewalks/ (electronic formats only: hard copies out of print).
- *Designing Sidewalks and Trails for Access, Part II, Best Practices Guide,* www.fhwa.dot.gov/environment/sidewalk2/ (electronic formats only: hard copies out of print, HTML version incorporates all the changes listed in the errata sheet: www.fhwa.dot.gov/environment/bikeped/errata.htm).
- Design Guidance Accommodating Bicycle and Pedestrian Travel:
- A Recommended Approach, A DOT Policy Statement on Integrating Bicycling and Walking into Transportation Infrastructure.
- *Manual on Uniform Traffic Control Devices (MUTCD)* provides the standards for traffic control devices and includes guidance on Accessible Pedestrian Signals, Chapter 4E. and Temporary Traffic Control Elements, Chapter 6D. The MUTCD is available at http://mutcd.fhwa.dot.gov.
- Detectable Warnings Memorandum (July 30, 2004).
- Detectable Warnings Memorandum (May 6, 2002): FHWA and the US Access Board encourage the use of the latest recommended design for truncated domes.

Accessible Pedestrian Signals

- Synthesis and Guide to Best Practices Web site - this Web site provides overall information on installation criteria and design considerations.
- Synthesis and Guide to Best Practices Article - this article provides the latest recommended technical specifications for installing accessible pedestrian signals.
- FHWA Pedestrian and Bicycle Safety - includes pedestrian and bicycle safety resources. http://safety.fhwa.dot.gov/ped_bike/ped/index.htm.
- FHWA Pedestrian and Bicycle Safety Research - provides information on issues and research related to improving pedestrian and bicyclist safety. www.tfhrc.gov/safety/pedbike/index.htm.

Other DOT Web sites

- U.S. Department of Transportation Accessibility Web site - The Department is committed to building a transportation system that provides access for all Americans. See www.dot.gov/citizen_services/disability/disability.html.
- Bureau of Transportation Statistics (BTS), Freedom to Travel,

(www.bts.gov/publications/freedom_to_travel/), a report on the travel issues for people who have disabilities.

Institute of Transportation Engineers

- Alternative Treatments for At-Grade Pedestrian Crossings (an informational report which documents studies on crosswalks and warrants used by various entities).

- ITE's Web site, www.ite.org/accessible/, has information on accessible intersection design, *Electronic Toolbox for Making Intersections More Accessible for Pedestrians Who are Blind or Visually Impaired*

Informational Web sites

- Accessible Design for the Blind: information and research on making travel safer and accessible for pedestrians with disabilities, www.accessforblind.org.

- The Pedestrian/Bicycle Information Center (sponsored by FHWA):
  - www.walkinginfo.org
  - www.bicyclinginfo.org

Definitions

Accessible.

Describes a site, building, facility, or portion thereof that complies with the ADA Accessibility Guidelines. (ADAAG 3.5)

Accessible Route.

A continuous unobstructed path connecting all accessible elements and spaces of a building or facility. Interior accessible routes may include corridors, floors, ramps, elevators, lifts, and clear floor space at fixtures. Exterior accessible routes may include parking access aisles, curb ramps, crosswalks at vehicular ways, walks, ramps, and lifts. (ADAAG 3.5)

Accessible Space.

Space that complies with the ADAAG. (ADAAG 3.5)

Alteration.

An alteration is a change to a building or facility that affects or could affect the usability of the building or facility or part thereof. Alterations include, but are not limited to, remodeling, renovation, rehabilitation, reconstruction, historic restoration, resurfacing of circulation paths or vehicular ways, changes or rearrangement of the structural parts or elements, and changes or rearrangement in the plan configuration of walls and full-height partitions. (ADAAG 3.5)

Further, each facility or part of a facility altered by, on behalf of, or for the use of, a public entity in a manner that affects or could affect the usability of the facility or part of the facility shall, to the maximum extent feasible, be altered in such manner that the altered portion of the facility is readily accessible to and usable by individuals with disabilities, if the alteration was commenced after January 26, 1992. (28 CFR §35.151(b)

Circulation Path.

An exterior or interior way of passage from one place to another for pedestrians, including, but not limited to, walks, hallways, courtyards, stairways, and stair landings. (ADAAG 3.5)

Designated agency.

The Federal agency designated to oversee compliance activities for particular components of State and local governments. (28 CFR §35.104)

Detectable Warning.

A standardized surface feature built in or applied to walking surfaces or other elements to warn visually

impaired people of hazards on a circulation path. (ADAAG 3.5)

Discrimination.
Denying handicapped persons the opportunity to participate in or benefit from any program or activity. (28 CFR §35.149)

Facility.
All or any portion of buildings, structures, site improvements, complexes, equipment, roads, walks, passageways, parking lots, or other real or personal property located on a site. (28 CFR §35.104; ADAAG 3.5)

Maximum Extent Feasible.
In alteration projects, an ADA-required accessibility improvement must be installed to the maximum extent feasible; that is, to the maximum extent technically, or physically, feasible. (ADAAG 4.1.6(1)(j)

Public Entity.
(1) Any State or local government;
(2) Any department, agency, special purpose district, or other instrumentality of a State or States or local government. (42 U.S.C. §12131)

Public Facility.
A facility or portion of a facility constructed by, on behalf of, or for the use of a public entity subject to title II of the ADA and 28 CFR Part 35 or 49 CFR §§ 37.41, 37.43. (28 CFR §35.104)

Public Use.
Describes interior or exterior rooms or spaces that are made available to the general public. Public use may be provided at a building or facility that is privately or publicly owned. (ADAAG 3.5)

Undue Burden.
In determining whether financial and administrative burdens are undue in making decisions program-wide in the transition plan, a public agency must consider all of that public agency's resources available for use in the funding and operation of the service, program, or activity. (29 CFR Part 35, App. A, discussion of §35.150, ¶ 6)

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FHWA

United States Department of Transportation - **Federal Highway Administration**

Attachment B

2010 Specifications

SPECIAL PROVISION
Local Government / RMA / Non-Standard Contracts

Disadvantaged Business Enterprise in Federal-Aid Construction

Description. The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal.

Article A. Disadvantaged Business Enterprise in Federal-Aid Construction.

1. **Policy.** It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, and the Department's DBE Program, apply to this contract as follows:

   a. The prime contractor (Contractor) will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the approved DBE Program, or show a good faith effort to meet the DBE goal for this contract.

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

   c. The requirements of this Special Provision shall be physically included in any subcontract.

   d. By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good

faith effort to meet the commitment. The Entity will determine the adequacy of a Contractor's efforts to meet the contract goal, within 10 business days, excluding national holidays, from receipt of the information outlined in this Special Provision under Article A.3, "Contractor's Responsibilities." If the requirements of Article A.3 are met, the conditional situation will be removed and the contract will be forwarded to the Contractor for execution.

2. Definitions.

a. "Department" means the Texas Department of Transportation.

b. "DOT" means the U.S. Department of Transportation, including the Office of the Secretary, and including the operating administrations, i.e. the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

c. "Federal-Aid Contract" is any contract between the Texas Department of Transportation and a Contractor at any tier, or Entity and a Contractor at any tier which is paid for in whole or in part with DOT financial assistance.

d. “Entity” means local government agency, MPO, RMA, etc.

e. "DBE Joint Venture" means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they 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.

f. "Disadvantaged Business Enterprise" or "DBE" means a firm certified through the Texas Unified Certification Program in accordance with 49 CFR Part 26 Subparts D and E.

g. "Good Faith Effort" means efforts to achieve a DBE goal or other requirement of 49 CFR Part 26 Subpart C and this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

h. "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.

i. "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.

To be a Regular Dealer, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.

A Regular Dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it owns and operates distribution equipment for the products. Any supplementing of Regular Dealer's own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. *Brokers, packagers, manufacturers' representatives, or other persons who arrange or expedite transactions shall not be regarded as a Regular Dealer.

***"Broker" is an intermediary or middleman that does not take possession of a commodity or act as a Regular Dealer selling to the public.

j. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.

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

l. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification in their region, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities, including TxDOT, to serve as certifying agents for Texas in specified regions. Applicants for DBE certification may be directed to the TUCP internet site for more information at:

//www.txdot.gov/business/business_outreach/tucp.htm

3. Contractor's Responsibilities. These requirements must be satisfied by the Contractor.

a. After conditional award of the contract, the Contractor shall submit a completed Form No.SMS.4901, "DBE Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal or a good faith effort to explain why the goal could not be reached, so as to arrive in the Entity's contracting office not later than 5:00 p.m. on the 10th business day, excluding national holidays, after the conditional award of the contract. When requested, additional time, not to exceed seven (7) business days, excluding national holidays, may be granted based on documentation submitted by the Contractor. The Entity shall submit the DBE Commitment Agreement package to the Department's Office of Civil Rights in Austin, Texas not later than 5:00 p.m. on the 30th business day, excluding national holidays, after the conditional award of the contract. The DBE Commitment Agreement package is subject to review, comment and approval by TxDOT prior to and as a condition of execution of the contract.

b. DBE prime contractors who subcontract with DBEs may receive credit toward the DBE goal for work performed by the DBE's own forces and work subcontracted to DBEs. A Contractor must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form No. SMS.4902. The completed form is provided to the Entity with a copy to the TxDOT District Office responsible for overseeing the project.

c. A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.
- 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 Contractor might otherwise prefer to perform the work items with its own forces.
- 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.
- Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and 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 negotiations 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.
- A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a Bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the

Contractor to perform the work of the contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

- 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. nonunion employee status) are not legitimate cause for the rejection or non-solicitation of bids and the Contractors efforts to meet the project goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- 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.
- If the Entity determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the TxDOT District Office responsible for overseeing the project. Opportunity for further appeals will be addressed by the TxDOT Office of Civil Rights.

d. Should the Bidder to whom the contract is conditionally awarded refuse, neglect or fail to meet the DBE goal or comply with good faith effort requirements, the Entity can take remedial financial action as provided by the Entity's/Department's rules or practices or reference to 43 TAC §9.56, as a guideline when the Entity does not have uniform rules or practices for non-compliance with the terms of its contracts.

All contract and project information shall be submitted directly to the Entity and with a copy to the TxDOT District or Office responsible to oversee the project.

e. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Article A.3.a. of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor shall make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE to the extent needed to meet the contract goal. The Contractor shall submit a completed Form No.4901, "DBE Commitment Agreement," and Form No. 2228 "Disadvantaged Business Enterprise (DBE) Request for Substition for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Entity. Prior to approving the substitution, the Entity will request a statement from the DBE about the circumstances

of its subcontract's termination. The contractor must have a written consent prior to substitution. A copy of all documentation shall be provided to the TxDOT District Office responsible to oversee the project.

f. The Contractor shall designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records, reports, efforts and contacts made to subcontract with DBEs.

g. Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

4. Eligibility of DBEs.

a. The member entities of the TUCP certify the eligibility of DBEs and DBE joint ventures to perform DBE subcontract work on DOT financially assisted contracts.

b. The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from the Department's OCR. An update of the Directory can be found on the Internet at

http://www.dot.state.tx.us/business/tucpinfo.htm.

c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Article A.3.a. and 3.g. above. For purposes of the DBE goal on this project. DBEs will only be allowed to perform work in the categories of work for which they are certified.

d. Only DBE firms certified at the time of execution of a contract, subcontract, or purchase order are eligible for DBE goal participation.

5. Determination of DBE Participation. When a DBE participates in a contract, only the values of the work actually performed by the DBE, as referenced below, shall be counted by the Contractor toward DBE goals:

a. The total amount paid to the DBE for work performed with the DBE's own forces is counted toward the DBE goal. 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 subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

b. A Contractor may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

(1) A Contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function (CUF) in the work of

a contract or purchase order. A DBE is considered to perform a CUF 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 CUF, 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.

A minimum of one CUF Project Site Review (CUFPSR) will be conducted by the Entity using Department Form 2182 on all DBE firms working on the project.

In accordance with 49 CFR Part 26. Appendix A. guidance concerning Good Faith Efforts, Contractors may make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Contractors may not however, negotiate the price of materials or supplies used on the contract by the DBE, nor may they determine quality and quantity, order the materials themselves, nor install the materials (if applicable), or pay for the material themselves. Contractors however, may share the quotations they receive from the material supplier with the DBE firm, so that the DBE firm may negotiate a reasonable price with the material supplier.

In all cases, Contractor or other non-DBE subcontractor assistance will not be credited toward the DBE goal.

(2) A DBE does not perform a CUF 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.

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to seventy percent (70%) of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) 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, it will be presumed that the DBE is not performing a CUF.

(3) A DBE trucking firm who is certified as a DBE is considered to be performing a CUF when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least one (1) fully licensed, insured, and operational truck used on the contract.

(a) The entity shall verify ownership of all trucks prior to commencement of work of the DBE trucking firm.

(b) The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates with drivers it employs.

(c) 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.

(d) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by the DBE-owned trucks on its sub-contract. Additional participation by non-DBEs receive credit only for the fee or commission it receives as result of the lease arrangement.

(e) A lease must indicate that the DBE has exclusive use of and control over the trucks giving the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.

(f) The DBE Trucking Firm shall submit Form 2371, "Trucking Credit Worksheet", within 10 calendar days of the end of the month to the Prime Contractor. The prime shall submit a copy of Form 2371 with the DBE Monthly Progress Report.

(4) When a DBE is presumed not to be performing a CUF the TxDOT District Office responsible to oversee the project will be notified. The DBE may present evidence to rebut this presumption.

c. A Contractor may count toward its DBE goals expenditures for materials and supplies obtained from a DBE manufacturer, provided that the DBE assumes the actual and contractual responsibility for the materials and supplies. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. (The definition of a DBE manufacturer is found at Article A.2.h. of this Special Provision.)

(2) If the materials or supplies are purchased from a DBE Regular Dealer, count 60% of the cost of the materials or supplies toward DBE goals. (The definition of a DBE Regular Dealer is found at Article A.2.i. of this Special Provision.)

(3) With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a Regular Dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the

delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals.

(4) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT financially assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

d. Should the DBE firm request assistance in the form of a joint check and the contractor chooses to assist the DBE firm, other than a manufacturing material supplier or Regular Dealer, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.

The Contractor must obtain approval from the Entity, prior to implementing the use of joint check arrangements with the DBE. The Contractor shall submit to the Entity, Joint Check Approval Form 2178 and provide copies of cancelled joint checks to the Entity upon request if the joint check arrangement is approved. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier. A copy of the completed form is to be provided to the TxDOT District Office responsible for overseeing the project.

e. No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.

f. No DBE goal credit will be allowed for the period of time determined by the Entity that the DBE was not performing a CUF. The denial period of time may occur before or after a determination has been made by the Entity. In case of the denial of credit for non-performance of a CUF of a DBE, the Contractor will be required to provide a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable and as required under Article A.3.e.

6. Records and Reports.

a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE race-neutral participation. Report payments made to non-DBE firms. The monthly report is to be

sent to the Entity with a copy to the TxDOT District Office responsible to oversee the project. These reports will be due within fifteen (15) days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. Form No. SMS.4903, DBE Progress Report, is to be used for monthly reporting. Form No. SMS.4904, DBE Final Report, is to be used as a final summary of DBE payments submitted upon completion of the project. The original final report must be submitted to the Entity with copies to the TxDOT District Office responsible for overseeing the project and to the TxDOT Office of Civil Rights. These forms may be obtained from the Department or may be reproduced by the Contractor. The Entity may verify the amounts being reported as paid to DBEs by requesting copies of cancelled checks paid to DBEs on a random basis. Cancelled checks and invoices should reference the Entity's or Department's project number, as applicable.

b. DBE subcontractors and/or material suppliers should be identified on the monthly report by Vendor Number, name, and the amount of actual payment made to each during the monthly period. Negative reports are required when no activity has occurred in a monthly period.

c. All such records must be retained by the Contractor and the Entity for a minimum of four (4) years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT operating administration.

d. Prior to receiving final payment, the Contractor shall submit Form No. SMS.4904. DBE Final Report. If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Article A.3.c. of this Special Provision, must be submitted with the DBE Final Report. A copy of the completed form is provided to the TxDOT District Office responsible for overseeing the project.

7. Compliance of Contractor.

a. To ensure that DBE requirements of this DOT financially assisted contract are complied with, the Entity will monitor the Contractor's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review by the Entity of monthly reports submitted to the Entity by the Contractor indicating his progress in achieving the DBE contract goal and by compliance reviews conducted on the project site by the Entity and by the Department, as needed.

b. The Contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor. The Contractor shall notify the Entity if it withholds or reduces payment to any DBE subcontractor. The Contractor shall submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract. Copies of these documents will be provided to the Entity and to the TxDOT District Office responsible for overseeing the project.

c. Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Entity.

d. The Contractor is prohibited from providing work crews and equipment to DBEs. DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies and/or materials from the Contractor or its affiliates is not allowed.

e. When a DBE subcontractor, named in the commitment under Article A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the Contractor is required 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.

f. A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of the contract. In such a case, the Entity or the Department, as appropriate, reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or such other remedy or remedies as the Entity deems appropriate, subject to review by the Department.

Article B. Race-Neutral Disadvantaged Business Enterprise Participation.

1. Policy. It is the policy of the DOT that Disadvantaged Business Enterprises (DBE), as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means.

a. If there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontractors financed in whole or in part with Federal funds.

b. The Contractor, subrecipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The Contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of DOT financially assisted contracts. Failure by the Contractor to carry out these

requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the Entity deems appropriate, subject to review by the Department.

2. **Reports.** Race-Neutral DBE participation on projects with no DBE goal shall be reported on Form No. SMS.4903, DBE Progress Report and submitted to the Entity each month and at project completion. Copies of payment documents should be sent to the TxDOT District Office responsible for project oversight. Payments to DBE firms are reported on Form No. SMS.4903 are subject to the requirements of Article A.5, "Determination of DBE Participation."

§ 26.13 What assurances must recipients and contractors make?

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

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

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

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

ATTACHMENT D

DBE Program Compliance Guidance
for
Local Government Agencies

OVERVIEW:

The DBE Program as authorized by 49 CFR, Part 26 ensures nondiscrimination in the award and administration of United States Department of Transportation contracts. The DBE Program applies to a Local Government Agency's highway contracts, funded in part or whole, from federal funds received through TxDOT and the Federal Highway Administration (FHWA). A Local Government Agency (LGA) may use TxDOT's DBE Program through a Memorandum Of Understanding (MOU). The MOU is the agreement that allows LGA's to use TxDOT's DBE Program and identifies the responsibility of each LGA as it pertains to DBE Program.

DBE annual goals are established by the Business Opportunity Programs Office (BOP) for the department's DBE Federal-Aid Highway Construction Programs. Individual contract goals are established by LGA with input from the BOP Office.

The BOP Office is responsible for administering the department's DBE Program. The BOP office, in conjunction with the LGA, will be responsible for monitoring the DBE Program and ensuring compliance. In an effort to effectively monitor the DBE Program, the DBE Program Compliance Guidance has been created and implemented. The LGAs will play a vital role in ensuring proper administration and compliance with the DBE Program.

GENERAL DBE PROGRAM PROCESS:

Annually, BOP will develop an overall goal for DBE participation in projects receiving federal funds. The objective is to achieve as much of the goal through "race-neutral" means as practical. This means that DBEs will participate in projects in the routine course of business and a specific project goal will not be assigned. If sufficient DBE participation is not anticipated through race-neutral means, "race-conscious" provisions are implemented and individual projects goals are assigned based on the availability of DBE firms to perform work within the scope of the project. In Fiscal Year 2005 and 2006, approximately one-half of the overall goal was achieved by race-neutral means.

The most current version of the DBE Special Provision is included in the bid documents of all federally funded projects. The Provision is divided into race-conscious and race-neutral sections. Race-neutral projects do not have a specific project goal while race-conscious projects will have a minimum goal to be achieved by the contractor to assure compliance with the terms of the

contract. The goal will be a percentage of the contract amount and is listed in the bid documents.

For projects with a goal, the contractor must submit a list of DBE firms the contractor commits to use to fulfill the goal as stated in the DBE Special Provisions. Once approved, this list forms the basis for project monitoring. The LGA monitors all federally funded projects that have DBE work to be counted toward meeting the annual goal. Monitoring is similar for race-neutral and race-conscious projects, but additional steps are required on race-conscious projects when the contractor does not meet the project goal or wants to substitute DBE firms for those listed in the contractor's commitment.

At the end of the project, actual DBE participation is totaled and credited to the annual goal for both race-neutral and race-conscious projects. Monitoring throughout the project gives assurance that credit is given for work accomplished in compliance with the specifications and statutes.

DBE PROGRAM COMPLIANCE GUIDANCE:

There are three key documents used in implementation and management of the DBE Program; the actual program as approved by FHWA, the current Special Provision to be included in all projects with federal funds, and a TxDOT Standard Operating Procedures Manual (SOP). This SOP contains the following Sections:

A. DBE Certification Program

B. Withdrawal, Denial, Surrender, Decertification and Appeal Program

C. Goal Setting, Counting DBE Participation, and Data Reporting

D. DBE Commitments, Good Faith Efforts, and Substitutions/Replacements

E. Joint Check Agreements

F. Prompt Payment and Retainage Monitoring and Enforcement

G. Commercially Useful Function Program Review

H. DBE Third Party Challenges

SECTION A: DBE CERTIFICATION PROGRAM
SECTION B: WITHDRAWAL, DENIAL, DECERTIFICATION, AND APPEAL PROGRAM PROCEDURES

General: In regards to Section A and B, the LGA does not have any responsibility regarding the DBE Certification Program as it relates to certification, withdrawal, denial, decertification and certification appeal procedures. As such, Section A and B are not part of the DBE Program Guidance for LGA.

Local Government Agency Procedures: The BOP Office and other TUCP Certifying Agencies have primary responsibility for all DBE certification actions. The LGA does not have any direct responsibility but may be requested to provide information or assistance to BOP or other TUCP Certifying Agencies regarding DBEs that are working on LGA federally-funded projects.

The LGA must be familiar with the TxDOT internet site www.dot.state.tx.us, TUCP Directory and use the information as appropriate for their monitoring activities.

SECTION C: GOAL SETTING, COUNTING DBE PARTICIPATION, AND DATA REPORTING

General: BOP is responsible for developing TxDOT's annual goal for DBE participation in projects funded by FHWA. The annual goal is comprised of race-neutral and race-conscious participation. For race-conscious participation, the LGA will assign a DBE goal for appropriate projects.

Work completed by a DBE will be counted toward the overall goal if the work is actually performed by the DBE (i.e. the DBE performs a "Commercially Useful Function" (CUF). CUF monitoring is discussed elsewhere in this document.

By special provision, the contractor must maintain certain records and submit certain reports. The contractor's records must be made available to LGA, TxDOT and FHWA on request. The following reports are submitted to LGA:

1. *DBE Program Commitment Agreement Form*
2. *DBE Monthly Project Report*
3. *DBE DBE/HUB Final Report*
4. *Prompt Payment Certification*

Local Government Agency Procedures:

- ☐ **Step 1** – Receive reports from the various sources and distribute as appropriate. The original of all reports should be kept with the official project records.
- ☐ **Step 2** – Verify the accuracy of DBE payments by comparing the *DBE Monthly Progress Report* to the *Prompt Payment Certification*.
- ☐ **Step 3** – Keep a running total of actual payments to DBE firms by entering information from *DBE Monthly Project Report* in subcontractors monitoring system.
- ☐ **Step 4** – Review the contractor's *DBE DBE/HUB Final Report* to ensure that DBE/SBE contract requirements have been satisfied.

SECTION D: DBE COMMITMENTS, GOOD FAITH EFFORTS, AND SUBSTITUTION REPLACEMENTS

General: This Section does not apply to race-neutral projects.

For projects with a specified percentage DBE goal, contractors make a commitment to meet the goal by signing the proposal and submitting a bid. Once the low bidder is determined and the contract is conditionally awarded, the contractor must submit a *DBE Commitment Agreement Form* or a *Pre-Good Faith Effort Review*. The *DBE Commitment Agreement Form* lists bid items and DBEs the contractor intends to use to fulfill the project DBE goal. The DBE Commitment Agreement Form is reviewed by the LGA to determine the appropriate DBE credit that will be allowed for each DBE. DBE Material Suppliers and Truckers have to provide the documentation at the time of commitment that supports the level of DBE credit that will be approved for each DBE. The contractor submits a *Pre-Good Faith Effort Review* if they believe they made every reasonable effort to do so but still cannot commit to meeting the goal. In either case, the form is submitted to the LGA for their action.

During the life of the project, LGA monitors the contractor's progress toward meeting the goal. If it appears that the goal may not be achieved, the contractor must show that they made a Good Faith Effort (GFE) to meet the goal. If justified, the GFE is approved. The contractor may also request that a different firm be substituted for one named in the *DBE Commitment Agreement Form*. The BOP Office will conduct periodic reviews of the LGA's projects to ensure compliance with the DBE Program requirements.

Local Government Agency Procedures:

Contract award

- ☐ **Step 1 –** LGA receives appropriate submission from the contractor and renders final compliance determination. LGA will keep informed of any adverse issues encountered during their review and approval process. After all issues are resolved, LGA approves contractor's commitment, enters information into their subcontractor monitoring system, and notifies the prime, and the DBE of their approval.

- ☐ **Step 2** – Contractor assures that a copy of *DBE Commitment Agreement Form* or *Notification of Compliance Letter* is transmitted to the project personnel for inclusion in the project records and for use in monitoring during construction.

Post GFE Review

- ☐ **Step 1 –** Determine actual goal achievements at the end of the project by reviewing their subcontractor monitoring programs, the

final estimate, and the Contractor's *DBE/HUB Final Report*. If the contractor did not meet the specified DBE goal, start Post GFE review by having the project personnel send the contractor a *Post Award GFE Information Request Letter*.

- ☐ **Step 2** – Assist the project personnel as requested in analyzing the contractor's documentation of GFE.
- ☐ **Step 3** – If the contractor's GFE is deficient, notify the contractor in writing, giving the contractor an opportunity to appeal the determination and/or provide additional information.
- ☐ **Step 4** – Complete a *Post-GFE Review Report* and prepare final disposition. Provide the BOP Office with a copy of the final disposition.

Substitutions/Replacements

- ☐ **Step 1** – Review documentation associated with the contractor's request.
  - o *DBE Commitment Agreement* for DBE to be substituted. Assure that the contractor provides all of the information requested.
  - o Written justification from the contractor listing reasons the DBE is being substituted.
- ☐ **Step 2** – Verify accuracy of the contractor's documentation by discussing circumstances with the project personnel as necessary.
- ☐ **Step 3** – Request a written statement from the DBE acknowledging they are being replaced. Consider any additional information the DBE may offer.
- ☐ **Step 4** – Determine whether the contractor is in compliance with the DBE special provision.
- ☐ **Step 5** – Prepare a *Substitution Form* and send to the project personnel for approval.

SECTION E: JOINT CHECK AGREEMENTS

General: The contractor may choose to assist a DBE firm by acting as a guarantor for payment of materials used by a DBE by the use of joint checks. To be eligible, the contractor must make joint checks available to all subcontractors and the DBE must agree to the arrangement. The contractor issues a joint check to the DBE and the material supplier and the DBE must issue the joint check to the material supplier. If approved by the LGA, this arrangement does not count against the DBE goal.

Local Government Agency Procedures:

- ☐ **Step 1** – Project personnel receives *DBE Joint Check Approval* from the contractor. Assist the project personnel in determining compliance with the Special Provision as requested. Project personnel sends signed *Approval* to the contractor by letter with copies to the DBE.
- ☐ **Step 2** – Compare the *DBE Monthly Progress Report* and *Prompt Payment Certification Form* for reasonable consistency**.**
- ☐ **Step 3** – Request a copy of cancelled joint checks for the months the contractor issued a joint check to each DBE with an approved *DBE Joint Check Approval*. Review the joint checks to ensure that payment was processed through the DBE.
- ☐ **Step 4** – If two consecutive reviews for the same DBE show no discrepancies, the LGA may reduce the frequency of requesting copies of cancelled joint checks.
- ☐ **Step 5** – Submit compliance questions to BOP for assistance as necessary.

SECTION F: PROMPT PAYMENT AND RETAINAGE MONITORING AND ENFORCEMENT

General: The contractor is paid for satisfactorily completed work every month through the monthly estimate process. This payment is for the work the contractor and all subcontractors perform. The contractor must pay subcontractors for the satisfactorily completed work within 10 days after the contractor receives payment for the subcontractors work from LGA.

Retainage is an amount of money withheld to ensure that the contractor fulfills all contract requirements, including submitting all documents at the end of the project. Retainage normally ranges from 3% – 5% of the amount paid and is not released until the final estimate is processed. It is common practice for the contractor to withhold retainage from their subcontractors. However, the contractor must release the total amount retained when the subcontractor satisfactorily completes all their work on the project. Depending on the scope of the subcontract, this may occur long before all work on the contract is finished.

Local Government Agency Procedures:

- ☐ **Step 1** – The project personnel receives a monthly *Prompt Payment Certification* from the contractor before the end of the month following receipt of payment from the LGA. This certification is kept in the project records and will be used only for dispute resolution.
- ☐ **Step 2** – Assist the project personnel as requested in the event a subcontractor alleges they did not receive prompt payment from the contractor. The project personnel must have the complaint in writing.
- ☐ **Step 3** – During visits to the project site, randomly spot check whether certifications are received in the time specified. Take appropriate action if non-compliance issues are discovered.

SECTION G: COMMERCIALLY USEFUL FUNCTION REVIEW PROGRAM

General: Commercially Useful Function (CUF), is the term used to describe a DBE's independence from the contractor. Over-reliance on a contractor brings a DBE's CUF into question. To perform a CUF, the DBE must be responsible for performing, managing, and supervising the work under its contract. The DBE must also be responsible for negotiating prices for, ordering, installing, and paying for material used in its work.

A contractor may only count the value of the work actually performed by a DBE toward the DBE goal. A DBE may enter into second-tier subcontracts, up to 70% of their contract. Work subcontracted to a non-DBE does not count towards the DBE goals. If the DBE does not perform or exercise responsibility for at least 30% of the total cost of their contract with their own work force, it will be presumed the DBE is not performing a CUF and none of the payments will be counted toward the contract goal.

The DBE Special Provision contains a discussion of when the contractor can count work by a DBE toward the goal.

Local Government Agency Procedures:

- **Step 1** – For projects with a specified DBE goal, contact the project personnel to ensure there is a copy of the *DBE Program Commitment Agreement Form* on the project.
- **Step 2** – For all projects, ask the project personnel to forward a copy of all completed *CUF On-Site Compliance Review Forms* to the LGA.
- **Step 3** – Project personnel will conduct at least one CUF review with each DBE on the project. Their review is documented using a *CUF On-Site Compliance Review Form* and should be performed as soon as practical after the DBE starts work on the project.
- **Step 4** – Periodically review the *DBE Monthly Progress Report* to assure that the the initial CUF review is conducted on the project in a timely manner. Contact the project personnel to discuss delays in receipt of CUF reviews. Provide assistance to the project personnel as requested and as work schedule allows.
- **Step 5** – Project personnel should observe DBE work as part of their normal inspection function. If the DBE's practices change after the initial CUF review, the project personnel should complete the *CUF Project Site Review*.
- **Step 6** – Periodically visit the project site after CUF monitoring starts. Discuss project personnel responsibilities and answer any questions the project personnel poses. As time allows, conduct a CUF review with project personnel and document using the *CUF Project Site Review* form. Explain "red flags" to project personnel to enhance their understanding of CUF.

- **Step 7** – Collect questions concerning CUF and submit to LGA with supporting documentation for their action. LGA will document their determination and will transmit the final determination to the contractor and the DBE. Forward to the project personnel for inclusion in the project records.

BOP will conduct periodic reviews of projects to monitor the LGA's compliance with CUF requirements.

SECTION H: DBE THIRD PARTY CHALLENGES

General: Anyone has the right to challenge the eligibility of a DBE firm. The challenge must be in writing and contain information to support the challenge. Responsibility for resolving the challenge lies with the TUCP certifying agency that initially certified the DBE's eligibility.

Local Government Agency Procedures:

- **Step 1** – Forward any third party challenges received by the LGA to BOP. BOP will be responsible for identifying the appropriate TUCP certifying agency that will handle the disposition of this challenge.

ATTACHMENT E

REQUIRED CONTRACT PROVISIONS
FEDERAL-AID CONSTRUCTION CONTRACTS

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ATTACHMENTS

A. Employment Preference for Appalachian Contracts (Included in Appalachian contracts only)

I. GENERAL

1. These contract provisions shall apply to all work performed on the contract by the contractor's own organization and with the assistance of workers under the contractor's immediate superintendence and to all work performed on the contract by piecework, station work, or by subcontract.

2. Except as otherwise provided for in each section, the contractor shall insert in each subcontract all of the stipulations contained in these Required Contract Provisions, and further require their inclusion in any lower tier subcontract or purchase order that may in turn be made. The Required Contract Provisions shall not be incorporated by reference in any case. The prime contractor shall be responsible for compliance by any subcontractor or lower tier subcontractor with these Required Contract Provisions.

3. A breach of any of the stipulations contained in these Required Contract Provisions shall be sufficient grounds for termination of the contract.

4. A breach of the following clauses of the Required Contract Provisions may also be grounds for debarment as provided in 29 CFR 5.12:

Section I, paragraph 2;
Section IV, paragraphs 1, 2, 3, 4, and 7;
Section V, paragraphs 1 and 2a through 2g.

5. Disputes arising out of the labor standards provisions of Section IV (except paragraph 5) and Section V of these Required Contract Provisions shall not be subject to the general disputes clause of this contract. Such disputes shall be resolved in accordance with the procedures of the U.S. Department of Labor (DOL) as set forth in 29 CFR 5, 6, and 7. Disputes within the meaning of this clause include disputes between the contractor (or any of its subcontractors) and the contracting agency, the DOL, or the contractor's employees or their representatives.

6. **Selection of Labor:** During the performance of this contract, the contractor shall not:

a. discriminate against labor from any other State, possession, or territory of the United States (except for employment preference for Appalachian contracts, when applicable, as specified in Attachment A), or

b. employ convict labor for any purpose within the limits of the project unless it is labor performed by convicts who are on parole, supervised release, or probation.

II. NONDISCRIMINATION

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

1. **Equal Employment Opportunity:** Equal employment opportunity (EEO) requirements not to discriminate and to take affirmative action to assure equal opportunity as set forth under laws, executive orders, rules, regulations (28 CFR 35, 29 CFR 1630 and 41 CFR 60) and orders of the Secretary of Labor as modified by the provisions prescribed herein, and imposed pursuant to 23 U.S.C. 140 shall constitute the EEO and specific affirmative action standards for the contractor's project activities under this contract. The Equal Opportunity Construction Contract Specifications set forth under 41 CFR 60-4.3 and the provisions of the American Disabilities Act of 1990 (42 U.S.C. 12101 et seq.) set forth under 28 CFR 35 and 29 CFR 1630 are incorporated by reference in this contract. In the execution of this contract, the contractor agrees to comply with the following minimum specific requirement activities of EEO:

a. The contractor will work with the State highway agency (SHA) and the Federal Government in carrying out EEO obligations and in their review of his/her activities under the contract.

b. The contractor will accept as his operating policy the following statement:

"It is the policy of this Company to assure that applicants are employed, and that employees are treated during employment, without regard to their race, religion, sex, color, national origin, age or disability. Such action shall include: employment, upgrading, demotion, or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship, preapprenticeship, and/or on-the-job training."

2. **EEO Officer:** The contractor will designate and make known to the SHA contracting officers an EEO Officer who will have the responsibility for and must be capable of effectively administering and promoting an active contractor program of EEO and who must be assigned adequate authority and responsibility to do so.

3. **Dissemination of Policy:** All members of the contractor's staff who are authorized to hire, supervise, promote, and discharge employees, or who recommend such action, or who are substantially involved in such action, will be made fully cognizant of, and will implement, the contractor's EEO policy and contractual responsibilities to provide EEO in each grade and classification of employment. To ensure that the above agreement will be met, the following actions will be taken as a minimum:

a. Periodic meetings of supervisory and personnel office employees will be conducted before the start of work and then not less often than once every six months, at which time the contractor's EEO policy and its implementation will be reviewed and explained. The meetings will be conducted by the EEO Officer.

b. All new supervisory or personnel office employees will be given a thorough indoctrination by the EEO Officer, covering all major aspects of the contractor's EEO obligations within thirty days following their reporting for duty with the contractor.

c. All personnel who are engaged in direct recruitment for the project will be instructed by the EEO Officer in the contractor's procedures for locating and hiring minority group employees.

d. Notices and posters setting forth the contractor's EEO policy will be placed in areas readily accessible to employees, applicants for employment and potential employees.

e. The contractor's EEO policy and the procedures to implement such policy will be brought to the attention of employees by means of meetings, employee handbooks, or other appropriate means.

4. **Recruitment:** When advertising for employees, the contractor will include in all advertisements for employees the notation: "An Equal Opportunity Employer." All such advertisements will be placed

in publications having a large circulation among minority groups in the area from which the project work force would normally be derived.

a. The contractor will, unless precluded by a valid bargaining agreement, conduct systematic and direct recruitment through public and private employee referral sources likely to yield qualified minority group applicants. To meet this requirement, the contractor will identify sources of potential minority group employees, and establish with such identified sources procedures whereby minority group applicants may be referred to the contractor for employment consideration.

b. In the event the contractor has a valid bargaining agreement providing for exclusive hiring hall referrals, he is expected to observe the provisions of that agreement to the extent that the system permits the contractor's compliance with EEO contract provisions. (The DOL has held that where implementation of such agreements have the effect of discriminating against minorities or women, or obligates the contractor to do the same, such implementation violates Executive Order 11246, as amended.)

c. The contractor will encourage his present employees to refer minority group applicants for employment. Information and procedures with regard to referring minority group applicants will be discussed with employees.

5. **Personnel Actions:** Wages, working conditions, and employee benefits shall be established and administered, and personnel actions of every type, including hiring, upgrading, promotion, transfer, demotion, layoff, and termination, shall be taken without regard to race, color, religion, sex, national origin, age or disability. The following procedures shall be followed:

a. The contractor will conduct periodic inspections of project sites to insure that working conditions and employee facilities do not indicate discriminatory treatment of project site personnel.

b. The contractor will periodically evaluate the spread of wages paid within each classification to determine any evidence of discriminatory wage practices.

c. The contractor will periodically review selected personnel actions in depth to determine whether there is evidence of discrimination. Where evidence is found, the contractor will promptly take corrective action. If the review indicates that the discrimination may extend beyond the actions reviewed, such corrective action shall include all affected persons.

d. The contractor will promptly investigate all complaints of alleged discrimination made to the contractor in connection with his obligations under this contract, will attempt to resolve such complaints, and will take appropriate corrective action within a reasonable time. If the investigation indicates that the discrimination may affect persons other than the complainant, such corrective action shall include such other persons. Upon completion of each investigation, the contractor will inform every complainant of all of his avenues of appeal.

6. **Training and Promotion:**

a. The contractor will assist in locating, qualifying, and increasing the skills of minority group and women employees, and applicants for employment.

b. Consistent with the contractor's work force requirements and as permissible under Federal and State regulations, the contractor shall make full use of training programs, i.e., apprenticeship, and on-the-job training programs for the geographical area of contract performance. Where feasible, 25 percent of apprentices or trainees in each occupation shall be in their first year of apprenticeship or training. In the event a special provision for training is provided under this contract, this subparagraph will be superseded as indicated in the special provision.

c. The contractor will advise employees and applicants for employment of available training programs and entrance requirements for each.

d. The contractor will periodically review the training and promotion potential of minority group and women employees and will encourage eligible employees to apply for such training and promotion.

7. **Unions:** If the contractor relies in whole or in part upon unions as a source of employees, the contractor will use his/her best efforts to obtain the cooperation of such unions to increase opportunities for minority groups and women within the unions, and to effect referrals by such unions of minority and female employees. Actions by the contractor either directly or through a contractor's association acting as agent will include the procedures set forth below:

a. The contractor will use best efforts to develop, in cooperation with the unions, joint training programs aimed toward qualifying more minority group members and women for membership in the unions and increasing the skills of minority group employees and women so that they may qualify for higher paying employment.

b. The contractor will use best efforts to incorporate an EEO clause into each union agreement to the end that such union will be contractually bound to refer applicants without regard to their race, color, religion, sex, national origin, age or disability.

c. The contractor is to obtain information as to the referral practices and policies of the labor union except that to the extent such information is within the exclusive possession of the labor union and such labor union refuses to furnish such information to the contractor, the contractor shall so certify to the SHA and shall set forth what efforts have been made to obtain such information.

d. In the event the union is unable to provide the contractor with a reasonable flow of minority and women referrals within the time limit set forth in the collective bargaining agreement, the contractor will, through independent recruitment efforts, fill the employment vacancies without regard to race, color, religion, sex, national origin, age or disability; making full efforts to obtain qualified and/or qualifiable minority group persons and women. (The DOL has held that it shall be no excuse that the union with which the contractor has a collective bargaining agreement providing for exclusive referral failed to refer minority employees.) In the event the union referral practice prevents the contractor from meeting the obligations pursuant to Executive Order 11246, as amended, and these special provisions, such contractor shall immediately notify the SHA.

8. **Selection of Subcontractors, Procurement of Materials and Leasing of Equipment:** The contractor shall not discriminate on the grounds of race, color, religion, sex, national origin, age or disability in the selection and retention of subcontractors, including procurement of materials and leases of equipment.

a. The contractor shall notify all potential subcontractors and suppliers of his/her EEO obligations under this contract.

b. Disadvantaged business enterprises (DBE), as defined in 49 CFR 23, shall have equal opportunity to compete for and perform subcontracts which the contractor enters into pursuant to this contract. The contractor will use his best efforts to solicit bids from and to utilize DBE subcontractors or subcontractors with meaningful minority group and female representation among their employees. Contractors shall obtain lists of DBE construction firms from SHA personnel.

c. The contractor will use his best efforts to ensure subcontractor compliance with their EEO obligations.

9. **Records and Reports:** The contractor shall keep such records as necessary to document compliance with the EEO requirements. Such records shall be retained for a period of three years following completion of the contract work and shall be available at reasonable times and places for inspection by authorized representatives of the SHA and the FHWA.

a. The records kept by the contractor shall document the following:

(1) The number of minority and non-minority group members and women employed in each work classification on the project;

(2) The progress and efforts being made in cooperation with unions, when applicable, to increase employment opportunities for minorities and women;

(3) The progress and efforts being made in locating, hiring, training, qualifying, and upgrading minority and female employees; and

(4) The progress and efforts being made in securing the services of DBE subcontractors or subcontractors with meaningful minority and female representation among their employees.

b. The contractors will submit an annual report to the SHA

each July for the duration of the project, indicating the number of minority, women, and non-minority group employees currently engaged in each work classification required by the contract work. This information is to be reported on Form FHWA-1391. If on-the job training is being required by special provision, the contractor will be required to collect and report training data.

III. NONSEGREGATED FACILITIES

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $10,000 or more.)

a. By submission of this bid, the execution of this contract or subcontract, or the consummation of this material supply agreement or purchase order, as appropriate, the bidder, Federal-aid construction contractor, subcontractor, material supplier, or vendor, as appropriate, certifies that the firm does not maintain or provide for its employees any segregated facilities at any of its establishments, and that the firm does not permit its employees to perform their services at any location, under its control, where segregated facilities are maintained. The firm agrees that a breach of this certification is a violation of the EEO provisions of this contract. The firm further certifies that no employee will be denied access to adequate facilities on the basis of sex or disability.

b. As used in this certification, the term "segregated facilities" means any waiting rooms, work areas, restrooms and washrooms, restaurants and other eating areas, timeclocks, locker rooms, and other storage or dressing areas, parking lots, drinking fountains, recreation or entertainment areas, transportation, and housing facilities provided for employees which are segregated by explicit directive, or are, in fact, segregated on the basis of race, color, religion, national origin, age or disability, because of habit, local custom, or otherwise. The only exception will be for the disabled when the demands for accessibility override (e.g. disabled parking).

c. The contractor agrees that it has obtained or will obtain identical certification from proposed subcontractors or material suppliers prior to award of subcontracts or consummation of material supply agreements of $10,000 or more and that it will retain such certifications in its files.

IV. PAYMENT OF PREDETERMINED MINIMUM WAGE

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural minor collectors, which are exempt.)

1. General:

a. All mechanics and laborers employed or working upon the site of the work will be paid unconditionally and not less often than once a week and without subsequent deduction or rebate on any account [except such payroll deductions as are permitted by regulations (29 CFR 3) issued by the Secretary of Labor under the Copeland Act (40 U.S.C. 276c)] the full amounts of wages and bona fide fringe benefits (or cash equivalents thereof) due at time of payment. The payment shall be computed at wage rates not less than those contained in the wage determination of the Secretary of Labor (hereinafter "the wage determination") which is attached hereto and made a part hereof, regardless of any contractual relationship which may be alleged to exist between the contractor or its subcontractors and such laborers and mechanics. The wage determination (including any additional classifications and wage rates conformed under paragraph 2 of this Section IV and the DOL poster (WH-1321) or Form FHWA-1495) shall be posted at all times by the contractor and its subcontractors at the site of the work in a prominent and accessible place where it can be easily seen by the workers. For the purpose of this Section, contributions made or costs reasonably anticipated for bona fide fringe benefits under Section 1(b)(2) of the Davis-Bacon Act (40 U.S.C. 276a) on behalf of laborers or mechanics are considered wages paid to such laborers or mechanics, subject to the provisions of Section IV, paragraph 3b, hereof. Also, for the purpose of this Section, regular contributions made or costs incurred for more than a weekly period (but not less often than quarterly) under plans, funds, or programs, which cover the particular weekly period, are deemed to be constructively made or incurred during such weekly period. Such laborers and mechanics shall be paid the appropriate wage rate and fringe benefits on the wage determination for the classification of work actually performed, without regard to skill, except as provided in paragraphs 4 and 5 of this Section IV.

b. Laborers or mechanics performing work in more than one classification may be compensated at the rate specified for each classification for the time actually worked therein, provided, that the employer's payroll records accurately set forth the time spent in each classification in which work is performed.

c. All rulings and interpretations of the Davis-Bacon Act and related acts contained in 29 CFR 1, 3, and 5 are herein incorporated by reference in this contract.

2. Classification:

a. The SHA contracting officer shall require that any class of laborers or mechanics employed under the contract, which is not listed in the wage determination, shall be classified in conformance with the wage determination.

b. The contracting officer shall approve an additional classification, wage rate and fringe benefits only when the following criteria have been met:

(1) the work to be performed by the additional classification requested is not performed by a classification in the wage determination;

(2) the additional classification is utilized in the area by the construction industry;

(3) the proposed wage rate, including any bona fide fringe benefits, bears a reasonable relationship to the wage rates contained in the wage determination; and

(4) with respect to helpers, when such a classification prevails in the area in which the work is performed.

c. If the contractor or subcontractors, as appropriate, the laborers and mechanics (if known) to be employed in the additional classification or their representatives, and the contracting officer agree on the classification and wage rate (including the amount designated for fringe benefits where appropriate), a report of the action taken shall be sent by the contracting officer to the DOL, Administrator of the Wage and Hour Division, Employment Standards Administration, Washington, D.C. 20210. The Wage and Hour Administrator, or an authorized representative, will approve, modify, or disapprove every additional classification action within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary.

d. In the event the contractor or subcontractors, as appropriate, the laborers or mechanics to be employed in the additional classification or their representatives, and the contracting officer do not agree on the proposed classification and wage rate (including the amount designated for fringe benefits, where appropriate), the contracting officer shall refer the questions, including the views of all interested parties and the recommendation of the contracting officer, to the Wage and Hour Administrator for determination. Said Administrator, or an authorized representative, will issue a determination within 30 days of receipt and so advise the contracting officer or will notify the contracting officer within the 30-day period that additional time is necessary

e. The wage rate (including fringe benefits where appropriate) determined pursuant to paragraph 2c or 2d of this Section IV shall be paid to all workers performing work in the additional classification from the first day on which work is performed in the classification.

3. Payment of Fringe Benefits:

a. Whenever the minimum wage rate prescribed in the contract for a class of laborers or mechanics includes a fringe benefit which is not expressed as an hourly rate, the contractor or subcontractors, as appropriate, shall either pay the benefit as stated in the wage determination or shall pay another bona fide fringe benefit or an hourly case equivalent thereof.

b. If the contractor or subcontractor, as appropriate, does not make payments to a trustee or other third person, he/she may consider as a part of the wages of any laborer or mechanic the amount of any costs reasonably anticipated in providing bona fide fringe benefits under a plan or program, provided, that the Secretary of Labor has found, upon the written request of the contractor, that the applicable standards of the Davis-Bacon Act have been met. The Secretary of Labor may require the contractor to set aside in a separate account assets for the meeting of obligations under the plan or program.

4. Apprentices and Trainees (Programs of the U.S. DOL) and Helpers:

a. Apprentices:

(1) Apprentices will be permitted to work at less than the predetermined rate for the work they performed when they are employed pursuant to and individually registered in a bona fide apprenticeship program registered with the DOL, Employment and Training Administration, Bureau of Apprenticeship and Training, or with a State apprenticeship agency recognized by the Bureau, or if a person is employed in his/her first 90 days of probationary employment as an apprentice in such an apprenticeship program, who is not individually registered in the program, but who has been certified by the Bureau of Apprenticeship and Training or a State apprenticeship agency (where appropriate) to be eligible for probationary employment as an apprentice.

(2) The allowable ratio of apprentices to journeyman-level employees on the job site in any craft classification shall not be greater than the ratio permitted to the contractor as to the entire work force under the registered program. Any employee listed on a payroll at an apprentice wage rate, who is not registered or otherwise employed as stated above, shall be paid not less than the applicable wage rate listed in the wage determination for the classification of work actually performed. In addition, any apprentice performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed. Where a contractor or subcontractor is performing construction on a project in a locality other than that in which its program is registered, the ratios and wage rates (expressed in percentages of the journeyman-level hourly rate) specified in the contractor's or subcontractor's registered program shall be observed.

(3) Every apprentice must be paid at not less than the rate specified in the registered program for the apprentice's level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Apprentices shall be paid fringe benefits in accordance with the provisions of the apprenticeship program. If the apprenticeship program does not specify fringe benefits, apprentices must be paid the full amount of fringe benefits listed on the wage determination for the applicable classification. If the Administrator for the Wage and Hour Division determines that a different practice prevails for the applicable apprentice classification, fringes shall be paid in accordance with that determination.

(4) In the event the Bureau of Apprenticeship and Training, or a State apprenticeship agency recognized by the Bureau, withdraws approval of an apprenticeship program, the contractor or subcontractor will no longer be permitted to utilize apprentices at less than the applicable predetermined rate for the comparable work performed by regular employees until an acceptable program is approved.

b. Trainees:

(1) Except as provided in 29 CFR 5.16, trainees will not be permitted to work at less than the predetermined rate for the work performed unless they are employed pursuant to and individually registered in a program which has received prior approval, evidenced by formal certification by the DOL, Employment and Training Administration.

(2) The ratio of trainees to journeyman-level employees on the job site shall not be greater than permitted under the plan approved by the Employment and Training Administration. Any employee listed on the payroll at a trainee rate who is not registered and participating in a training plan approved by the Employment and Training Administration shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed. In addition, any trainee performing work on the job site in excess of the ratio permitted under the registered program shall be paid not less than the applicable wage rate on the wage determination for the work actually performed.

(3) Every trainee must be paid at not less than the rate specified in the approved program for his/her level of progress, expressed as a percentage of the journeyman-level hourly rate specified in the applicable wage determination. Trainees shall be paid fringe benefits in accordance with the provisions of the trainee program. If the trainee program does not mention fringe benefits, trainees shall be paid the full amount of fringe benefits listed on the wage determination unless the Administrator of the Wage and Hour Division determines that there is an apprenticeship program associated with the corresponding journeyman-level wage rate on the wage determination which provides for less than full fringe benefits for apprentices, in which case such trainees shall receive the same fringe benefits as apprentices.

(4) In the event the Employment and Training Administration withdraws approval of a training program, the contractor or subcontractor will no longer be permitted to utilize trainees at less than the applicable predetermined rate for the work performed until an acceptable program is approved.

c. Helpers:

Helpers will be permitted to work on a project if the helper classification is specified and defined on the applicable wage determination or is approved pursuant to the conformance procedure set forth in Section IV.2. Any worker listed on a payroll at a helper wage rate, who is not a helper under a approved definition, shall be paid not less than the applicable wage rate on the wage determination for the classification of work actually performed.

5. Apprentices and Trainees (Programs of the U.S. DOT):

Apprentices and trainees working under apprenticeship and skill training programs which have been certified by the Secretary of Transportation as promoting EEO in connection with Federal-aid highway construction programs are not subject to the requirements of paragraph 4 of this Section IV. The straight time hourly wage rates for apprentices and trainees under such programs will be established by the particular programs. The ratio of apprentices and trainees to journeymen shall not be greater than permitted by the terms of the particular program.

6. Withholding:

The SHA shall upon its own action or upon written request of an authorized representative of the DOL withhold, or cause to be withheld, from the contractor or subcontractor under this contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to Davis-Bacon prevailing wage requirements which is held by the same prime contractor, as much of the accrued payments or advances as may be considered necessary to pay laborers and mechanics, including apprentices, trainees, and helpers, employed by the contractor or any subcontractor the full amount of wages required by the contract. In the event of failure to pay any laborer or mechanic, including any apprentice, trainee, or helper, employed or working on the site of the work, all or part of the wages required by the contract, the SHA contracting officer may, after written notice to the contractor, take such action as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds until such violations have ceased.

7. Overtime Requirements:

No contractor or subcontractor contracting for any part of the contract work which may require or involve the employment of laborers, mechanics, watchmen, or guards (including apprentices, trainees, and helpers described in paragraphs 4 and 5 above) shall require or permit any laborer, mechanic, watchman, or guard in any workweek in which he/she is employed on such work, to work in excess of 40 hours in such workweek unless such laborer, mechanic, watchman, or guard receives compensation at a rate not less than one-and-one-half times his/her basic rate of pay for all hours worked in excess of 40 hours in such workweek.

8. Violation:

Liability for Unpaid Wages; Liquidated Damages: In the event of any violation of the clause set forth in paragraph 7 above, the contractor and any subcontractor responsible thereof shall be liable to the affected employee for his/her unpaid wages. In addition, such contractor and subcontractor shall be liable to the United States (in the case of work done under contract for the District of Columbia or a territory, to such District or to such territory) for liquidated damages. Such liquidated damages shall be computed with respect to each individual laborer, mechanic, watchman, or guard employed in violation of the clause set forth in paragraph 7, in the sum of $10 for each calendar day on which such employee was required or permitted to work in excess of the standard work week of 40 hours without payment of the overtime wages required by the clause set forth in paragraph 7.

9. Withholding for Unpaid Wages and Liquidated Damages:

The SHA shall upon its own action or upon written request of any authorized representative of the DOL withhold, or cause to be withheld, from any monies payable on account of work performed by the contractor or subcontractor under any such contract or any other Federal contract with the same prime contractor, or any other Federally-assisted contract subject to the Contract Work Hours and Safety Standards Act, which is held by the same prime contractor, such sums as may be determined to be necessary to satisfy any liabilities of such contractor or subcontractor for unpaid wages and liquidated damages as provided in the clause set forth in paragraph 8 above.

V. STATEMENTS AND PAYROLLS

(Applicable to all Federal-aid construction contracts exceeding $2,000 and to all related subcontracts, except for projects located on roadways classified as local roads or rural collectors, which are exempt.)

1. Compliance with Copeland Regulations (29 CFR 3):

The contractor shall comply with the Copeland Regulations of the Secretary of Labor which are herein incorporated by reference.

2. Payrolls and Payroll Records:

a. Payrolls and basic records relating thereto shall be maintained by the contractor and each subcontractor during the course of the work and preserved for a period of 3 years from the date of completion of the contract for all laborers, mechanics, apprentices, trainees, watchmen, helpers, and guards working at the site of the work.

b. The payroll records shall contain the name, social security number, and address of each such employee; his or her correct classification; hourly rates of wages paid (including rates of contributions or costs anticipated for bona fide fringe benefits or cash equivalent thereof the types described in Section 1(b)(2)(B) of the Davis Bacon Act); daily and weekly number of hours worked; deductions made; and actual wages paid. In addition, for Appalachian contracts, the payroll records shall contain a notation indicating whether the employee does, or does not, normally reside in the labor area as defined in Attachment A, paragraph 1. Whenever the Secretary of Labor, pursuant to Section IV, paragraph 3b, has found that the wages of any laborer or mechanic include the amount of any costs reasonably anticipated in providing benefits under a plan or program described in Section 1(b)(2)(B) of the Davis Bacon Act, the contractor and each subcontractor shall maintain records which show that the commitment to provide such benefits is enforceable, that the plan or program is financially responsible, that the plan or program has been communicated in writing to the laborers or mechanics affected, and show the cost anticipated or the actual cost incurred in providing benefits. Contractors or subcontractors employing apprentices or trainees under approved programs shall maintain written evidence of the registration of apprentices and trainees, and ratios and wage rates prescribed in the applicable programs.

c. Each contractor and subcontractor shall furnish, each week in which any contract work is performed, to the SHA resident engineer a payroll of wages paid each of its employees (including apprentices, trainees, and helpers, described in Section IV, paragraphs 4 and 5, and watchmen and guards engaged on work during the preceding weekly payroll period). The payroll submitted shall set out accurately and completely all of the information required to be maintained under paragraph 2b of this Section V. This information may be submitted in any form desired. Optional Form WH-347 is available for this purpose and may be purchased from the Superintendent of Documents (Federal stock number 029-005-0014-1), U.S. Government Printing Office, Washington, D.C. 20402. The prime contractor is responsible for the submission of copies of payrolls by all subcontractors.

d. Each payroll submitted shall be accompanied by a "Statement of Compliance," signed by the contractor or subcontractor or his/her agent who pays or supervises the payment of the persons employed under the contract and shall certify the following:

(1) that the payroll for the payroll period contains the information required to be maintained under paragraph 2b of this Section V and that such information is correct and complete;

(2) that such laborer or mechanic (including each helper, apprentice, and trainee) employed on the contract during the payroll period has been paid the full weekly wages earned, without rebate, either directly or indirectly, and that no deductions have been made either directly or indirectly from the full wages earned, other than permissible deductions as set forth in the Regulations, 29 CFR 3;

(3) that each laborer or mechanic has been paid not less that the applicable wage rate and fringe benefits or cash equivalent for the classification of worked performed, as specified in the applicable wage determination incorporated into the contract.

e. The weekly submission of a properly executed certification set forth on the reverse side of Optional Form WH-347 shall satisfy the requirement for submission of the "Statement of Compliance" required by paragraph 2d of this Section V.

f. The falsification of any of the above certifications may subject the contractor to civil or criminal prosecution under 18 U.S.C. 1001 and 31 U.S.C. 231.

g. The contractor or subcontractor shall make the records required under paragraph 2b of this Section V available for inspection, copying, or transcription by authorized representatives of the SHA, the FHWA, or the DOL, and shall permit such representatives to interview employees during working hours on the job. If the contractor or subcontractor fails to submit the required records or to make them available, the SHA, the FHWA, the DOL, or all may, after written notice to the contractor, sponsor, applicant, or owner, take such actions as may be necessary to cause the suspension of any further payment, advance, or guarantee of funds. Furthermore, failure to submit the required records upon request or to make such records available may be grounds for debarment action pursuant to 29 CFR 5.12.

VI. RECORD OF MATERIALS, SUPPLIES, AND LABOR

1. On all Federal-aid contracts on the National Highway System, except those which provide solely for the installation of protective devices at railroad grade crossings, those which are constructed on a force account or direct labor basis, highway beautification contracts, and contracts for which the total final construction cost for roadway and bridge is less than $1,000,000 (23 CFR 635) the contractor shall:

a. Become familiar with the list of specific materials and supplies contained in Form FHWA-47, "Statement of Materials and Labor Used by Contractor of Highway Construction Involving Federal Funds," prior to the commencement of work under this contract.

b. Maintain a record of the total cost of all materials and supplies purchased for and incorporated in the work, and also of the quantities of those specific materials and supplies listed on Form FHWA-47, and in the units shown on Form FHWA-47.

c. Furnish, upon the completion of the contract, to the SHA resident engineer on Form FHWA-47 together with the data required in paragraph 1b relative to materials and supplies, a final labor summary of all contract work indicating the total hours worked and the total amount earned.

2. At the prime contractor's option, either a single report covering all contract work or separate reports for the contractor and for each subcontract shall be submitted.

VII. SUBLETTING OR ASSIGNING THE CONTRACT

1. The contractor shall perform with its own organization contract work amounting to not less than 30 percent (or a greater percentage if specified elsewhere in the contract) of the total original contract price, excluding any specialty items designated by the State. Specialty items may be performed by subcontract and the amount of any such specialty items performed may be deducted from the total original contract price before computing the amount of work required to be performed by the contractor's own organization (23 CFR 635).

a. "Its own organization" shall be construed to include only workers employed and paid directly by the prime contractor and equipment owned or rented by the prime contractor, with or without operators. Such term does not include employees or equipment of

a subcontractor, assignee, or agent of the prime contractor.

b. "Specialty Items" shall be construed to be limited to work that requires highly specialized knowledge, abilities, or equipment not ordinarily available in the type of contracting organizations qualified and expected to bid on the contract as a whole and in general are to be limited to minor components of the overall contract.

2. The contract amount upon which the requirements set forth in paragraph 1 of Section VII is computed includes the cost of material and manufactured products which are to be purchased or produced by the contractor under the contract provisions.

3. The contractor shall furnish (a) a competent superintendent or supervisor who is employed by the firm, has full authority to direct performance of the work in accordance with the contract requirements, and is in charge of all construction operations (regardless of who performs the work) and (b) such other of its own organizational resources (supervision, management, and engineering services) as the SHA contracting officer determines is necessary to assure the performance of the contract.

4. No portion of the contract shall be sublet, assigned or otherwise disposed of except with the written consent of the SHA contracting officer, or authorized representative, and such consent when given shall not be construed to relieve the contractor of any responsibility for the fulfillment of the contract. Written consent will be given only after the SHA has assured that each subcontract is evidenced in writing and that it contains all pertinent provisions and requirements of the prime contract.

VIII. SAFETY: ACCIDENT PREVENTION

1. In the performance of this contract the contractor shall comply with all applicable Federal, State, and local laws governing safety, health, and sanitation (23 CFR 635). The contractor shall provide all safeguards, safety devices and protective equipment and take any other needed actions as it determines, or as the SHA contracting officer may determine, to be reasonably necessary to protect the life and health of employees on the job and the safety of the public and to protect property in connection with the performance of the work covered by the contract.

2. It is a condition of this contract, and shall be made a condition of each subcontract, which the contractor enters into pursuant to this contract, that the contractor and any subcontractor shall not permit any employee, in performance of the contract, to work in surroundings or under conditions which are unsanitary, hazardous or dangerous to his/her health or safety, as determined under construction safety and health standards (29 CFR 1926) promulgated by the Secretary of Labor, in accordance with Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

3. Pursuant to 29 CFR 1926.3, it is a condition of this contract that the Secretary of Labor or authorized representative thereof, shall have right of entry to any site of contract performance to inspect or investigate the matter of compliance with the construction safety and health standards and to carry out the duties of the Secretary under Section 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333).

IX. FALSE STATEMENTS CONCERNING HIGHWAY PROJECTS

In order to assure high quality and durable construction in conformity with approved plans and specifications and a high degree of reliability on statements and representations made by engineers, contractors, suppliers, and workers on Federal-aid highway projects, it is essential that all persons concerned with the project perform their functions as carefully, thoroughly, and honestly as possible. Willful falsification, distortion, or misrepresentation with respect to any facts related to the project is a violation of Federal law. To prevent any misunderstanding regarding the seriousness of these and similar acts, the following notice shall be posted on each Federal-aid highway project (23 CFR 635) in one or more places where it is readily available to all persons concerned with the project:

NOTICE TO ALL PERSONNEL ENGAGED ON FEDERAL-AID HIGHWAY PROJECTS

18 U.S.C. 1020 reads as follows:

"Whoever, being an officer, agent, or employee of the United States, or of any State or Territory, or whoever, whether a person, association, firm, or corporation, knowingly makes any false statement, false representation, or false report as to the character, quality, quantity, or cost of the material used or to be used, or the quantity or quality of the work performed or to be performed, or the cost thereof in connection with the submission of plans, maps, specifications, contracts, or costs of construction on any highway or related project submitted for approval to the Secretary of Transportation; or

Whoever knowingly makes any false statement, false representation, false report or false claim with respect to the character, quality, quantity, or cost of any work performed or to be performed, or materials furnished or to be furnished, in connection with the construction of any highway or related project approved by the Secretary of Transportation; or

Whoever knowingly makes any false statement or false representation as to material fact in any statement, certificate, or report submitted pursuant to provisions of the Federal-aid Roads Act approved July 1, 1916, (39 Stat. 355), as amended and supplemented;

Shall be fined not more that $10,000 or imprisoned not more than 5 years or both."

X. IMPLEMENTATION OF CLEAN AIR ACT AND FEDERAL WATER POLLUTION CONTROL ACT

(Applicable to all Federal-aid construction contracts and to all related subcontracts of $100,000 or more.)

By submission of this bid or the execution of this contract, or subcontract, as appropriate, the bidder, Federal-aid construction contractor, or subcontractor, as appropriate, will be deemed to have stipulated as follows:

1. That any facility that is or will be utilized in the performance of this contract, unless such contract is exempt under the Clean Air Act, as amended (42 U.S.C. 1857 et seq., as amended by Pub.L. 91-604), and under the Federal Water Pollution Control Act, as amended (33 U.S.C. 1251 et seq., as amended by Pub.L. 92-500), Executive Order 11738, and regulations in implementation thereof (40 CFR 15) is not listed, on the date of contract award, on the U.S. Environmental Protection Agency (EPA) List of Violating Facilities pursuant to 40 CFR 15.20.

2. That the firm agrees to comply and remain in compliance with all the requirements of Section 114 of the Clean Air Act and Section 308 of the Federal Water Pollution Control Act and all regulations and guidelines listed thereunder.

3. That the firm shall promptly notify the SHA of the receipt of any communication from the Director, Office of Federal Activities, EPA, indicating that a facility that is or will be utilized for the contract is under consideration to be listed on the EPA List of Violating Facilities.

4. That the firm agrees to include or cause to be included the requirements of paragraph 1 through 4 of this Section X in every nonexempt subcontract, and further agrees to take such action as the government may direct as a means of enforcing such requirements.

XI. CERTIFICATION REGARDING DEBARMENT, SUSPENSION, INELIGIBILITY AND VOLUNTARY EXCLUSION

1. **Instructions for Certification - Primary Covered Transactions:**

(Applicable to all Federal-aid contracts - 49 CFR 29)

a. By signing and submitting this proposal, the prospective primary participant is providing the certification set out below.

b. The inability of a person to provide the certification set out below will not necessarily result in denial of participation in this covered transaction. The prospective participant shall submit an explanation of why it cannot provide the certification set out below. The certification or explanation will be considered in connection with the department or agency's determination whether to enter into this transaction. However, failure of the prospective primary participant to furnish a certification or an explanation shall disqualify such a person from participation in this transaction.

c. The certification in this clause is a material representation of fact upon which reliance was placed when the department or agency determined to enter into this transaction. If it is later determined that the prospective primary participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department or agency may terminate this

transaction for cause of default.

d. The prospective primary participant shall provide immediate written notice to the department or agency to whom this proposal is submitted if any time the prospective primary participant learns that its certification was erroneous when submitted or has become erroneous by reason of changed circumstances.

e. The terms "covered transaction," "debarred," "suspended," "ineligible," "lower tier covered transaction," "participant," "person," "primary covered transaction," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the department or agency to which this proposal is submitted for assistance in obtaining a copy of those regulations.

f. The prospective primary participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency entering into this transaction.

g. The prospective primary participant further agrees by submitting this proposal that it will include the clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," provided by the department or agency entering into this covered transaction, without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

h. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the nonprocurement portion of the "Lists of Parties Excluded From Federal Procurement or Nonprocurement Programs" (Nonprocurement List) which is compiled by the General Services Administration.

i. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

j. Except for transactions authorized under paragraph f of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency may terminate this transaction for cause or default.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Primary Covered Transactions

1. The prospective primary participant certifies to the best of its knowledge and belief, that it and its principals:

a. Are not presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from covered transactions by any Federal department or agency;

b. Have not within a 3-year period preceding this proposal been convicted of or had a civil judgement rendered against them for commission of fraud or a criminal offense in connection with obtaining, attempting to obtain, or performing a public (Federal, State or local) transaction or contract under a public transaction; violation of Federal or State antitrust statutes or commission of embezzlement, theft, forgery, bribery, falsification or destruction of records, making false statements, or receiving stolen property;

c. Are not presently indicted for or otherwise criminally or civilly charged by a governmental entity (Federal, State or local) with commission of any of the offenses enumerated in paragraph 1b of this certification; and

d. Have not within a 3-year period preceding this application/proposal had one or more public transactions (Federal, State or local) terminated for cause or default.

2. Where the prospective primary participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

2. **Instructions for Certification - Lower Tier Covered Transactions:**

(Applicable to all subcontracts, purchase orders and other lower tier transactions of $25,000 or more - 49 CFR 29)

a. By signing and submitting this proposal, the prospective lower tier is providing the certification set out below.

b. The certification in this clause is a material representation of fact upon which reliance was placed when this transaction was entered into. If it is later determined that the prospective lower tier participant knowingly rendered an erroneous certification, in addition to other remedies available to the Federal Government, the department, or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

c. The prospective lower tier participant shall provide immediate written notice to the person to which this proposal is submitted if at any time the prospective lower tier participant learns that its certification was erroneous by reason of changed circumstances.

d. The terms "covered transaction," "debarred," "suspended," "ineligible," "primary covered transaction," "participant," "person," "principal," "proposal," and "voluntarily excluded," as used in this clause, have the meanings set out in the Definitions and Coverage sections of rules implementing Executive Order 12549. You may contact the person to which this proposal is submitted for assistance in obtaining a copy of those regulations.

e. The prospective lower tier participant agrees by submitting this proposal that, should the proposed covered transaction be entered into, it shall not knowingly enter into any lower tier covered transaction with a person who is debarred, suspended, declared ineligible, or voluntarily excluded from participation in this covered transaction, unless authorized by the department or agency with which this transaction originated.

f. The prospective lower tier participant further agrees by submitting this proposal that it will include this clause titled "Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transaction," without modification, in all lower tier covered transactions and in all solicitations for lower tier covered transactions.

g. A participant in a covered transaction may rely upon a certification of a prospective participant in a lower tier covered transaction that is not debarred, suspended, ineligible, or voluntarily excluded from the covered transaction, unless it knows that the certification is erroneous. A participant may decide the method and

frequency by which it determines the eligibility of its principals. Each participant may, but is not required to, check the Nonprocurement List.

h. Nothing contained in the foregoing shall be construed to require establishment of a system of records in order to render in good faith the certification required by this clause. The knowledge and information of participant is not required to exceed that which is normally possessed by a prudent person in the ordinary course of business dealings.

i. Except for transactions authorized under paragraph e of these instructions, if a participant in a covered transaction knowingly enters into a lower tier covered transaction with a person who is suspended, debarred, ineligible, or voluntarily excluded from participation in this transaction, in addition to other remedies available to the Federal Government, the department or agency with which this transaction originated may pursue available remedies, including suspension and/or debarment.

* * * * *

Certification Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion--Lower Tier Covered Transactions:

1. The prospective lower tier participant certifies, by submission of this proposal, that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation in this transaction by any Federal department or agency.

2. Where the prospective lower tier participant is unable to certify to any of the statements in this certification, such prospective participant shall attach an explanation to this proposal.

* * * * *

XII. CERTIFICATION REGARDING USE OF CONTRACT FUNDS FOR LOBBYING

(Applicable to all Federal-aid construction contracts and to all related subcontracts which exceed $100,000 - 49 CFR 20)

1. The prospective participant certifies, by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

a. No Federal appropriated funds have been paid or will be paid, by or on behalf of the undersigned, to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

b. If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any Federal agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

2. This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by 31 U.S.C. 1352. Any person who fails to file the required certification shall be subject to a civil penalty of not less than $10,000 and not more than $100,000 for each such failure.

3. The prospective participant also agrees by submitting his or her bid or proposal that he or she shall require that the language of this certification be included in all lower tier subcontracts, which exceed $100,000 and that all such recipients shall certify and disclose accordingly.

ATTACHMENT A - EMPLOYMENT PREFERENCE FOR APPALACHIAN CONTRACTS
(Applicable to Appalachian contracts only.)

1. During the performance of this contract, the contractor undertaking to do work which is, or reasonably may be, done as on-site work, shall give preference to qualified persons who regularly reside in the labor area as designated by the DOL wherein the contract work is situated, or the subregion, or the Appalachian counties of the State wherein the contract work is situated, except:

a. To the extent that qualified persons regularly residing in the area are not available.

b. For the reasonable needs of the contractor to employ supervisory or specially experienced personnel necessary to assure an efficient execution of the contract work.

c. For the obligation of the contractor to offer employment to present or former employees as the result of a lawful collective bargaining contract, provided that the number of nonresident persons employed under this subparagraph 1c shall not exceed 20 percent of the total number of employees employed by the contractor on the contract work, except as provided in subparagraph 4 below.

2. The contractor shall place a job order with the State Employment Service indicating (a) the classifications of the laborers, mechanics and other employees required to perform the contract work, (b) the number of employees required in each classification, (c) the date on which he estimates such employees will be required, and (d) any other pertinent information required by the State Employment Service to complete the job order form. The job order may be placed with the State Employment Service in writing or by telephone. If during the course of the contract work, the information submitted by the contractor in the original job order is substantially modified, he shall promptly notify the State Employment Service.

3. The contractor shall give full consideration to all qualified job applicants referred to him by the State Employment Service. The contractor is not required to grant employment to any job applicants who, in his opinion, are not qualified to perform the classification of work required.

4. If, within 1 week following the placing of a job order by the contractor with the State Employment Service, the State Employment Service is unable to refer any qualified job applicants to the contractor, or less than the number requested, the State Employment Service will forward a certificate to the contractor indicating the unavailability of applicants. Such certificate shall be made a part of the contractor's permanent project records. Upon receipt of this certificate, the contractor may employ persons who do not normally reside in the labor area to fill positions covered by the certificate, notwithstanding the provisions of subparagraph 1c above.

5. The contractor shall include the provisions of Sections 1 through 4 of this Attachment A in every subcontract for work which is, or reasonably may be, done as on-site work.

ATTACHMENT F

Disadvantaged Business Enterprise (DBE) Program (49 CFR 26)



UPDATED JANUARY 2010
REVISED JUNE 2006
REVISED OCTOBER 1999

Policy Statement

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

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

Nondiscrimination Policy

TxDOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, national origin, age or disability.

In administering its DBE program, TxDOT 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, national origin, age or disability.

TxDOT has disseminated this policy statement to the Texas Transportation Commission and all the components of our organization. Through the distribution of this DBE program, we have distributed this statement to DBE and non-DBE business communities that perform work for us on DOT-assisted contracts.

Appointment of DBE Liaison Officer (DBELO)

The Assistant Executive Director for Support Operations has been delegated as the DBE Liaison Officer. In that capacity, the Assistant Executive Director for Support Operations 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 TxDOT in its financial assistance agreements with the Department of Transportation.

Amadeo Saenz, P.E.
Executive Director
Texas Department of Transportation

11/30/07
Date

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM
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SUBPART A - GENERAL REQUIREMENTS Section

26.1 Objectives

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

Section 26.3 Applicability

TxDOT is the recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq;
TxDOT is the recipient of federal -aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity;
Act for the 21StCentury (TEA-21, Pub. L 105-178, 112 Stat. 107. SAFETEA-LU, P.L 109-59;
TxDOT is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the TEA-21, Pub. L 105-178. SAFETEA-LU, P.L. 109-59

Section 26.5 Definitions

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

Section 26.7 Non-discrimination Requirements

TxDOT will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 -**Attachment 1** on the basis of race, color, sex, or national origin.

In administering its DBE program, TxDOT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows:

We will submit annually The Uniform Report of DBE Awards or Commitment and Payments as modified for use by FAA recipients [as amended 68 FR 35556, June 16, 2003].

We will report on a semi-annual basis The Uniform Report of DBE Awards or Commitment and Payments as modified for use by FHWA [as amended 68 FR 35556, June 16,2003].

We will report on a semi-annual basis The Uniform Report of DBE Awards or Commitment and Payments as modified for use by FTA recipients [as amended 68 FR 35556, June 16, 2003].

These reports will reflect payments actually made to DBEs on DOT assisted contracts.

Bidders List: 26.11(c)

TxDOT will create a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms. We will collect this information in the following ways:

> The TxDOT Bidder's list consists of firms that include highway construction prime contractors, professional servic e prov iders and subcontrac tor and materi al suppliers. Subcontractor and material su pplier information is suppl ied by t he low bid Prime Contractor. T xDOT Bidder's List data was developed from contractors who have submitted bids on highway cons truction contracts. In the contract proposal, the low bidder, prio r to award of the contrac t, is required to submit bidders information they received for the pr oject. The Bidder's List also contain s data from DBEs that subm itted bids for construction and professional servic e contracts and from the DBE Commitments and Awards made.

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

> TxDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT assisted

contracts. The recipients DBE Program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to TxDOT of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

Contract Assurance: 26.13b

We will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

> The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. This information is included in the DBE Special Provision 000-1966 1.A.1.b. - **Attachment 2.**

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The Department provides U.S. DOT with updates representing significant changes in the program as they occur. The department understands that all changes must be approved by FHWA, FTA, FAA prior to implementation.

Section 26.23 Policy Statement

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

Section 26.25 DBE Liaison Officer (DBELO)

The Assistant Executive Director for Support Operations has been delegated as the DBE Liaison Officer. In that capacity, the Assistant Executive Director for Support Operations is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is ac orded the same priority as compliance with all other legal obligations incurred by TxDOT in its financial assistance agreements with the Department of Transportation.

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that TxDOT complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Executive Director concerning DBE program matters. An organizational chart - **Attachment 3** displays the DBELO's position in the organization.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 17 to assist in the administration of the program. The duties and responsibilities of the DBELO and staff include the following:

1 Gathers and reports statistical data and other information as required by DOT.
2 Works with all departments to set overall annual goals.
3 Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
4 Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress).
5 Participates with the Division Directors and District Officials to determine contractor compliance with good faith efforts.
6 Analyzes TxDOT's progress toward DBE goal attainment and identifies ways to improve progress.
7 Participates in pre-bid meetings.
8 Advises the Executive Director and the Texas Transportation Commission on DBE matters and achievement.
9 Chairs the DBE Liaison Committee.
10 Participates in pre-bid meetings.
11 Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12 Plans and participates in DBE training seminars.
13 Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Texas.
14 Provides outreach to DBEs and community organizations to advise them of opportunities.
15 Maintains the Texas Unified Certification Program (TUCP) updated directory on certified DBEs.

Section 26.27 DBE Financial Institutions

It is the policy of TxDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. We have made a thorough search for financial institutions owned and controlled by socially and economically disadvantaged individuals in the State of Texas and were unable to identify financial institutions meeting the requirements of Section 26.27.

Section 26.29 Prompt Payment Mechanisms

TxDOT will require prime contractors to pay subcontractors for satisfactory performance of their contracts as specified in the Special Provision 009-007 Measurement and Payment - **Attachment 4,** which is included in all federal-aid contracts.

In regards to the prompt pay full payment of retainage, TxDOT has adopted option 2. TxDOT will decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage held by prime contractor to the subcontractor as specified in Special Provision 009-007 Measurement and Payment-**Attachment4.**

[68 FR 35553, June 16, 2003]

Section 26.31 Directory

TxDOT maintains a 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. We revise the Directory on a weekly basis.

The TUCP Certifying Partners agree that TxDOT will serve as the TUCP directory manager. The directory manager will be responsible for the following actions:

- Input all data and make any corrections, additions and/or deletions upon receipt of information from the Certifying TUCP Partners;
- Maintain and keep the DBE directory current;
- Make the DBE directory available to all TUCP Partners and other interested parties;

- Maintain the TUCP directory website at www.dot.state.tx.us see **Attachment 5** for sample.

Section 26.33 Over-concentration

TxDOT has not identified that over-concentration exists in the types of work that DBEs perform.

Section 26.35 Business Development Programs

TxDOT has established a business development program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

> Monitoring Mechanisms-To ensure that DBE requirements of the DOT assisted contract are complied with, the Department will monitor the Contractor's efforts to involve DBEs during the performance of the contract. This will be accomplished by a review of monthly reports submitted to the Area Engineer by the Contractor indicating his progress in achieving the DBE contract goal, **and** by compliance reviews conducted on the project site by the Department. The DBE Special Provision 000-1966 - **Attachment 2** is included in all federal-aid projects and outlines the monitoring mechanism for compliance with 49CFR Part 26.
>
> Enforcement mechanisms- A Contractor's failure to comply with the requirements of the DBE Special Provision 000-1966 - **Attachment 2** shall constitute a material breach of the federal-aid contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

[As amended at 65 FR 68951, Nov 15, 2000, 68 FR 35554, June 16, 2003]

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-asides or Quotas

TxDOT does not use set-asides or quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

In accordance with Section 26.45(f) TxDOT will submit its overall goal to DOT on August 1 of each year. Before establishing the overall goal each year, TxDOT will consult with women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and TxDOTs efforts to establish a level playing field for the participation of DBEs.

Following this consultation, we will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at our principal office for 30 days following the date of the notice, and informing the public that TxDOT will accept comments on the goals for 45 days from the date of the notice. The notice is published on TxDOT's website, newsletter, newspapers, available minority-focus media, and trade publications. Normally, we will issue this notice by June 25th of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

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

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

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 6** to this program. This section of the program will be updated annually.

Section 26.49 Transit Vehicle Manufacturers Goals

TxDOT 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, TxDOT 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 (d-g) Contract Goals

TxDOT will use contract goals to meet any portion of the overall goal TxDOT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

We 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.)

We will express our contract goals as a percentage of the total amount of a DOT assisted contract.

TxDOT DBE Special Provision and Bidder's Certification

The purpose of the DBE Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal-Aid Construction", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply, to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal.

Certification of DBE Goal Attainment

The certification of DBE goal attainment is included in all proposals for federal-aid highway projects. By signing the proposal, the Bidder certifies that the DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the Bidder will provide a good faith effort to substantiate the attempt to meet the goal. Failure to provide commitments to meet the stated goal or provide a satisfactory good faith effort will be considered a breach of the requirements of the proposal. As a result, the bid proposal guaranty of the bidder will become property of the Department and the Bidder will be excluded for re bidding on the project when it is re-advertised. See **Attachment 7.**

Tracking and monitoring of DBE goals throughout the life of the contract will be performed by the Department.

The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE race-neutral participation. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. Office of Civil Rights reviews monthly progress reports through computer programs, i.e. SiteManager and Subcontractor Monitoring System (SMS). Upon continual monitoring of the DBE commitment and payments by the Area Engineer, the Area Engineer will notify the Office of Civil Rights of any issue that requires further review. The Office of Civil Rights will initiate a compliance review and take the appropriate contract remedies. See attached DBE Special Provisions 000-1966 - **Attachment 2.**

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.

TxDOTs Office of Civil Rights is 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.

We will ensure that all information is complete and accurate and adequately documents the bidder/offer's good faith efforts before we commit to the performance of the contract by the bidder/offeror. This process for Good Faith Effort is included in the DBE Special Provision 000-1966 3.c. - **Attachment 2.**

Information to be submitted (26.53(b))
TxDOT treats bidder/offers' compliance with good faith efforts[1] requirements as a matter of responsiveness.

Each solicitation for which a contract goal has been established will require the bidders/offerors 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 will perform;
3. The dollar amount of the participation of each DBE firm participating;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractors commitment and

6. If the contract goal is not met, evidence of good faith efforts.

Administrative reconsideration (26.53(d))

Within 15 days of being informed by TxDOT 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 Office of Civil Rights, 125 E. 11th Street, Austin, Texas 78701, (512) 416-4700. 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 our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. We will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

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

Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

The Districts will be responsible for coordinating and approving Prime's request for Substitution. Districts will notify Office of Civil Rights of the determination of a contractor's compliance and/or noncompliance of the DBE Special Provision and be responsible for coordinating appropriate sanctions with TxDOT's DBE Liaison Officer. If the contractor fails to comply according to federal regulations specified in 49 CFR §26.53 and according to TxDOT contract specifications the contractor will be sanctioned as outlined in TxDOT DBE Special Provision 000-1966-**Attachment 2.**

A Contractor's failure to comply with the requirements of the DBE Special Provision shall constitute a material breach of the contract. In such a case, the Department reserves the right to terminate the contract, deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due to the Contractor, secure a refund, not as a penalty but as liquidated damages to the Department, or such other remedy or remedies as the Department deems appropriate.

Section 26.55 Counting DBE Participation

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

The district will perform CUF reviews on contracts that have a DBE goal. A CUF review will be performed on DBEs listed on the approved contract commitment using the *Commercially Useful Function (CUF) Project Site Review* checklist. If needed to verify a CUF, obtain a copy of the subcontract agreement for clarification regarding the DBEs contractual responsibilities. Office of Civil Rights will perform the CUF reviews on DBE suppliers. For non-supplier DBEs listed on the contract DBE commitment working on the project site and associated project specific locations, complete the checklist as follows:

1. Complete the initial checklist as soon as possible after the DBE's commencement of its work.
2. Monitor the DBEs performance and conduct additional reviews when the DBE's work performance brings into question whether the DBE meets CUF requirements.
3. If information obtained indicates possible noncompliance with the CUF requirements, contact Office of Civil Rights for a final determination.

In order to provide consistent interpretations statewide, Office of Civil Rights will make final negative CUF determinations and provide guidance and assistance for CUF reviews.

For trucking firms TxDOT will count DBE goal credit as follows:

A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUF when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least 1 fully licensed, insured, and operational truck used on the contract.

(a) The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates using drivers it employs.
(b) 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.
(c) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by the DBE-owned trucks on the contract. Additional participation by non-DBE lessees receive credit only for the fee or commission it receives as result of the lease arrangement

(d) A lease must indicate that the DBE has exclusive use of and control over the trucks giving the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.

[68 FR 35554, June 16, 2003]

Use Of Joint Checks

With department approval, the use of joint checks between a prime contractor and a DBE subcontractor is allowed. The new DBE Special Provision Section 1.A.5.d. states the following regarding the use of joint checks:

> ***"If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a Joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement***
>
> ***The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department, Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier."***

Procedures- For all federal-aid contracts, review and approve the use of joint checks prior to their use. Districts should verify that the DBE subcontractor is responsible for ordering, scheduling delivery and issuing payment for the materials.

Prime contractor requests for joint check approval must be submitted to the Area Engineer on *Form 2178, DBE Joint Check Approval* - **Attachment 8**. The Department will expedite approval or denial of the use of DBE joint check agreements to ensure timely delivery of materials. Reasons for denial include, but are not limited to, the prime contractor's insistence on the joint check arrangement and failure of all parties to agree to the arrangement (only the DBE or the supplier may request the use of a joint check).

Obtain copies of cancelled joint checks as necessary to verify that the joint checks have passed through the DBE. Bank images are an acceptable method of review. Review the joint check agreements as necessary to ensure that a three party arrangement exists.

Material cost paid by the prime contractor directly to the material supplier is not allowed for DBE goal credit and may cause the denial of DBE goal credit for all work performed by the DBE subcontractor.

SUBPART D - CERTIFICATION STANDARDS

TxDOT 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:

The Office of Civil Rights, 125 E. 11th Street, Austin, Texas 78701, Toll Free 1-866-480-2518

Our certification application forms and documentation requirements are found in the attached TUCP Standard Operating Procedures (SOP) at **Attachment 9.**

SUBPART E - CERTIFICATION PROCEDURES

TxDOT is a member of the Texas Unified Certification Program (TUCP)]. The TUPC will meet all of the requirements of this section. A description of the TUCP Memorandum of Agreement (MOA) is found at **Attachment 10.**

Withdrawal of DBE Application: TxDOT will follow the procedures under the TUCP for withdrawal DBE Application. A DBE may withdraw their application prior to a certification decision being rendered by TxDOT. TxDOT will acknowledge the DBE request for withdrawal of DBE Application by certified letter. The DBE may not reapply for certification for a period of 12 months from the date of receipt of TxDOT's letter, this withdrawal may not be appealed to US DOT.

Voluntary Surrender of Certification: TxDOT will follow the procedures under the TUCP for surrender of DBE Certification. A DBE may surrender their certification and TxDOT will acknowledge the DBE's request for surrender of their certification by certified letter. The DBE may not reapply for certification for a period of 12 months from the date of receipt of TxDOT's letter. This voluntary surrender may not be appealed to US DOT.

Section 26.83 Procedures for Certification Decisions

For procedures for the certification decisions see the attached TUCP Standard Operating Procedures (SOP) at **Attachment 9.**

TxDOT is one of six certifying agencies in Texas. The six certifying agencies have agreed by Memorandum of Agreement that TxDOT will be responsible for all highway construction industry DBE applications, Annual Affidavits, three-year on-site review, and decertification if applicable.

TxDOT will ensure that the decision in a proceeding to remove a firm's eligibility (decertification) is made by 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 personnel who did take part in these actions.

SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation and Intimidation or Retaliation

TxDOT will not release information that may be reasonably construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE Certification and supporting documentation.

TxDOT will keep the identity of complainants confidential at their election, however complainants will be advised that in some circumstances, failure to waive the privilege will result in the closure of the investigation or proceeding or hearing. Federal Aviation Administration (FAA) follows the procedures of 14 CFR Part 16 with respect to confidentiality of information and complaints.

All participants in the Department's DBE Program (including but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigation and other request for information. Failure to do so shall be a ground for appropriate action against the party involved.

If you are a recipient, contractor, or any other participant in the program you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part. Records must be retained for a period of 3 years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

ATTACHMENTS

Attachment 1 DBE Regulations: 49 CFR Part 26
Attachment 2 DBE Special Provision 000-1966
Attachment 3 Organizational Chart
Attachment 4 Measurement and Payment Special Provision 009-007
Attachment 5 TUCP DBE directory example and website address to the directory
Attachment 6 DBE Goal Methodology
Attachment 7 DBE Bidder Certification
Attachment 8 DBE Joint Check Approval Form
Attachment 9 TUCP SOP
Attachment 10 TUCP MOA
Attachment 11 Forms List

ATTACHMENT 1

ATTACHMENT 1

§ 25.545 Pre-employment inquiries.

(a) *Marital status.* A recipient shall not make pre-employment inquiry as to the marital status of an applicant for employment, including whether such applicant is "Miss" or "Mrs."

(b) *Sex.* A recipient may make pre-employment inquiry as to the sex of an applicant for employment, but only if such inquiry is made equally of such applicants of both sexes and if the results of such inquiry are not used in connection with discrimination prohibited by these Title IX regulations.

§ 25.550 Sex as a bona fide occupational qualification.

A recipient may take action otherwise prohibited by §§ 25.500 through 25.550 provided it is shown that sex is a bona fide occupational qualification for that action, such that consideration of sex with regard to such action is essential to successful operation of the employment function concerned. A recipient shall not take action pursuant to this section that is based upon alleged comparative employment characteristics or stereotyped characterizations of one or the other sex, or upon preference based on sex of the recipient, employees, students, or other persons, but nothing contained in this section shall prevent a recipient from considering an employee's sex in relation to employment in a locker room or toilet facility used only by members of one sex.

Subpart F—Procedures

§ 25.600 Notice of covered programs.

Within 60 days of September 29, 2000, each Federal agency that awards Federal financial assistance shall publish in the FEDERAL REGISTER a notice of the programs covered by these Title IX regulations. Each such Federal agency shall periodically republish the notice of covered programs to reflect changes in covered programs. Copies of this notice also shall be made available upon request to the Federal agency's office that enforces Title IX.

§ 25.605 Enforcement procedures.

The investigative, compliance, and enforcement procedural provisions of Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d) ("Title VI") are hereby adopted and applied to these Title IX regulations. These procedures may be found at 49 CFR part 21.

[65 FR 52895, Aug. 30, 2000]

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

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APPENDIX B TO PART 26—UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS FORM
APPENDIX C TO PART 26—DBE BUSINESS DEVELOPMENT PROGRAM GUIDELINES
APPENDIX D TO PART 26—MENTOR-PROTÉGÉ PROGRAM GUIDELINES
APPENDIX E TO PART 26—INDIVIDUAL DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE
APPENDIX F TO PART 26—UNIFORM CERTIFICATION APPLICATION FORM

AUTHORITY: 23 U.S.C. 324; 42 U.S.C. 2000d, *et seq.*; 49 U.S.C 1615, 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105–178, 112 Stat. 107, 113.

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

Subpart A—General

§ 26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

(a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;

(b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;

(c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;

(d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;

(e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;

(f) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

(g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§ 26.3 To whom does this part apply?

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

(1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102–240, 105 Stat. 1914,

or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178.

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

(b) [Reserved]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

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

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

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

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

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

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

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

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

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

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

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

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;

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

(vi) Women;

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

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

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

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

§26.7 What discriminatory actions are forbidden?

(a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of

a particular race, color, sex, or national origin.

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

(a) This part applies instead of subparts A and C through E of 49 CFR part 23 in effect prior to March 4, 1999. (See 49 CFR Parts 1 to 99, revised as of October 1, 1998.) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 have definitive, binding effect in implementing the provisions of this part and constitute the official position of the Department of Transportation.

(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 binding, and constitute the official position of the Department of Transportation, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

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

§ 26.11 What records do recipients keep and report?

(a) [Reserved]

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

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

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

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

(i) Firm name;

(ii) Firm address;

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

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than $500,000; $500,000–$1 million; $1–2 million; $2–5 million; *etc.*) rather than requesting an exact figure from the firm.

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

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000]

§ 26.13 What assurances must recipients and contractors make?

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

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

(b) Each contract you sign with a contractor (and each subcontract the

prime contractor signs with a subcontractor) must include the following assurance:

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

§ 26.15 How can recipients apply for exemptions or waivers?

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

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in § 26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

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

§ 26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) exceeding $250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding $250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000]

§ 26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

§ 26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

§ 26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§ 26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within

30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

§26.31 What requirements pertain to the DBE directory?

You must maintain and make available to interested persons a directory identifying all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE. You must revise your directory at least annually and make updated information available to contractors and the public on request.

§26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with §26.51, to unsure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

§26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully

in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a "mentor-protégé" program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

§ 26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award is actually performed by DBEs.

(c) This mechanism must provide for a running tally of actual DBE attainments (*e.g.*, payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart C—Goals, Good Faith Efforts, and Counting

§ 26.41 What is the role of the statutory 10 percent goal in this program?

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 26.43 Can recipients use set-asides or quotas as part of this program?

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

§26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) $250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in §26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the "but for" factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming fiscal year;

(2) If you are an FTA or FAA recipient, as a percentage of all FTA or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the forthcoming fiscal year. In appropriate cases, the FTA or FAA Administrator may permit you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects.

(f)(1) If you set overall goals on a fiscal year basis, you must submit them to the applicable DOT operating administration for review on August 1 of each year, unless the Administrator of the concerned operating administration establishes a different submission date.

(2) If you are an FTA or FAA recipient and set your overall goal on a project or grant basis, you must submit the goal for review at a time determined by the FTA or FAA Administrator.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see § 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with the your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could

be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003]

§ 26.47 Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

§ 26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

(d) As a recipient, you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider

its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination,

you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year.

Example to Paragraph (f)(1): Your overall goal for Year I is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year I.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to Paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to Paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to Paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (i.e., from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in §26.11.

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders/offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

(v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and

(3) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—

(i) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

(1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

(e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals,

as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1) You must require that a prime contractor not terminate for convenience a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without your prior written consent.

(2) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement.

(3) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

(g) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

§26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

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

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the

DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

(2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate Department Operating Administration.

Example to this paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

(6) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in §26.87(i)).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003]

Subpart D—Certification Standards

§26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in §26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in §26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (*see* §26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of

proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see § 26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate § 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. You must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of $16.6 million. The Secretary adjusts this amount for inflation from time to time.

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2) (i) You must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) whose ownership and control are relied upon for DBE certification to certify that he or she has a personal net worth that does not exceed $750,000.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or state law, you must not release an individual's personal net worth statement nor any documentation supporting it to any third party without the written consent of the submitter. *Provided,* that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds $750,000, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of § 26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds $750,000, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

(c) [Reserved]

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds $750,000 shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information

to permit determinations under the guidance of Appendix E of this part.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35554, June 16, 2003]

§ 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record, viewed as a whole.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policymaking, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

(1) The owner's expertise must be—

(i) In a specialized field;

(ii) Of outstanding quality;

(iii) In areas critical to the firm's operations;

(iv) Indispensable to the firm's potential success;

(v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no

term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with

non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

(g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning

the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual

was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You may not, in this situation, require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licenser is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

§ 26.73 What are other rules affecting certification?

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the

firm currently meets the ownership and control standards of this part. Nor must you refuse to certify a firm solely on the basis that it is a newly formed firm.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of §26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it

meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendents of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (*see* Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (*e.g.*, information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003]

Subpart E—Certification Procedures

§ 26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this section), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

§26.83 What procedures do recipients follow in making certification decisions?

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.

(c) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(1) Perform an on-site visit to the offices of the firm. You must interview the principal officers of the firm and review their résumés and/or work histories. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

(4) Determine the work history of the firm, including contracts it has received and work it has completed;

(5) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any;

(6) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(7) Require potential DBEs to complete and submit an appropriate application form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.

(i) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.

(ii) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(iii) You must review all information on the form prior to making a decision about the eligibility of the firm.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) When another DOT recipient has certified a firm, you have discretion to take any of the following actions:

(1) Certify the firm in reliance on the certification decision of the other recipient;

(2) Make an independent certification decision based on documentation provided by the other recipient, augmented by any additional information you require the applicant to provide; or

(3) Require the applicant to go through your application process without regard to the action of the other recipient.

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h) Once you have certified a DBE, it shall remain certified for a period of at least three years unless and until its certification has been removed through the procedures of § 26.87. You may not require DBEs to reapply for certification as a condition of continuing to participate in the program during this three-year period, unless the factual basis on which the certification was made changes.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under § 26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by state law to administer

oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts. If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003]

§26.84 How do recipients process applications submitted pursuant to the DOT/SBA MOU?

(a) When an SBA-certified firm applies for certification pursuant to the DOT/SBA MOU, you must accept the certification applications, forms and packages submitted by a firm to the SBA for either the 8(a) BD or SDB programs, in lieu of requiring the applicant firm to complete your own application forms and packages. The applicant may submit the package directly, or may request that the SBA forward the package to you. Pursuant to the MOU, the SBA will forward the package within thirty days.

(b) If necessary, you may request additional relevant information from the SBA. The SBA will provide this additional material within forty-five days of your written request.

(c) Before certifying a firm based on its 8(a) BD or SDB certification, you must conduct an on-site review of the firm (*see* §26.83(c)(1)). If the SBA conducted an on-site review, you may rely on the SBA's report of the on-site review. In connection with this review, you may also request additional relevant information from the firm.

(d) Unless you determine, based on the on-site review and information obtained in connection with it, that the firm does not meet the eligibility requirements of Subpart D of this part, you must certify the firm.

(e) You are not required to process an application for certification from an SBA-certified firm having its principal place of business outside the state(s) in which you operate unless there is a report of a "home state" on-site review on which you may rely.

(f) You are not required to process an application for certification from an SBA-certified firm if the firm does not provide products or services that you use in your DOT-assisted programs or airport concessions.

[68 FR 35555, June 16, 2003]

§26.85 How do recipients respond to requests from DBE-certified firms or the SBA made pursuant to the DOT/SBA MOU?

(a) Upon receipt of a signed, written request from a DBE-certified firm, you must transfer to the SBA a copy of the firm's application package. You must transfer this information within thirty days of receipt of the request.

(b) If necessary, the SBA may make a written request to the recipient for additional materials (*e.g.*, the report of the on-site review). You must provide a copy of this material to the SBA within forty-five days of the additional request.

(c) You must provide appropriate assistance to SBA-certified firms, including providing information pertaining

to the DBE application process, filing locations, required documentation and status of applications.

[68 FR 35555, June 16, 2003]

§ 26.86 What rules govern recipients' denials of initial requests for certification?

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003]

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

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

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

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

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

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

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

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

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

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

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

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

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

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (i.e., an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information that was concealed or misrepresented by the firm in previous certification actions by a recipient;

(4) A change in the certification standards or requirements of the Department since you certified the firm; or

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) When you decertify a DBE firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(i) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendancy of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

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

(k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under § 26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms applying pursuant to the DOT/SBA MOU, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in § 26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 5414, Washington, DC 20590.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under § 26.109(c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be

deemed a failure to cooperate under §26.109(c).

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, state, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (*see* paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003]

§ 26.91 What actions do recipients take following DOT certification appeal decisions?

(a) If you are the recipient from whose action an appeal under § 26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under § 26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in § 26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in § 26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under § 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

Subpart F—Compliance and Enforcement

§ 26.101 What compliance procedures apply to recipients?

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

§ 26.103 What enforcement actions apply in FHWA and FTA programs?

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

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) *Reasonable cause notice.* If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.

(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

§26.105 What enforcement actions apply in FAA programs?

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of §26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

§26.107 What enforcement actions apply to firms participating in the DBE program?

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false,

fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 49 CFR part 29.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must not release information that may be 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 documentation. However, you must transmit this information to DOT in any certification appeal proceeding under § 26.89 in which the disadvantaged status of the individual is in question.

(b) *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

(c) *Cooperation.* All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) *Intimidation and retaliation.* If you are a recipient, contractor, or any other participant in the program, you must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified,

assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. If you violate this prohibition, you are in noncompliance with this part.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

APPENDIX A TO PART 26—GUIDANCE CONCERNING GOOD FAITH EFFORTS

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere *pro forma* efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call; meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

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

A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or

associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

APPENDIX B TO PART 26—UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS FORM

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.

3. Specify the Federal fiscal year (i.e., October 1 – September 30) in which the covered reporting period falls.

4. State the date of submission of this report.

5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 – March 31. If this report is due December 1, data should cover April 1 – September 30. If this report is due to the FAA, data should cover the entire year.

6. Name of the recipient.

7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.

8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.

8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to certified DBEs during this reporting period.

8(E). From the total dollars awarded in 8(C), provide the dollar amount awarded to DBEs though the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.

8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.

8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(H) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(H) should equal the sum of 8(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.

12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.

12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.

12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.

12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.

12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.

13(A)-13(E). Items 13(A)-13(E) are derived in the same manner as items 12(A)-12(E), except these figures should be based on Race Neutral prime contacts (i.e. those with no race conscious measures).

14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

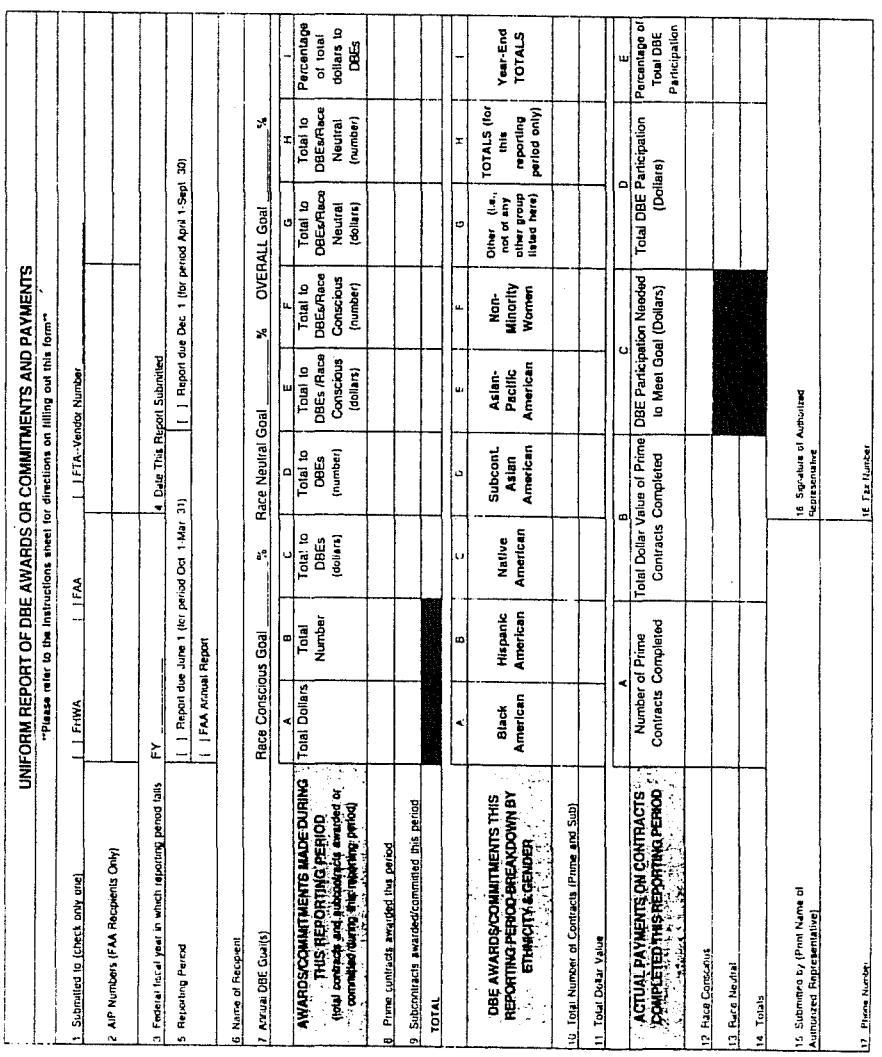
15. Name of the Authorized Representative preparing this form.

16. Signature of the Authorized Representative.

17. Phone number of the Authorized Representative.

18. Fax number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.



UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

Please refer to the instructions sheet for directions on filling out this form

1. Submitted to (check only one) [ ] FHWA [ ] FAA [ ] FTA--Vendor Number
2. AIP Numbers (FAA Recipients Only)
3. Federal fiscal year in which reporting period falls FY _____
4. Date This Report Submitted
5. Reporting Period [ ] Report due June 1 (for period Oct 1-Mar 31) [ ] Report due Dec 1 (for period April 1-Sept 30)
   [ ] FAA Annual Report
6. Name of Recipient
7. Annual DBE Goal(s) Race Conscious Goal _____% Race Neutral Goal _____% OVERALL Goal _____%

AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts awarded or committed during this reporting period)	A Total Dollars	B Total Number	C Total to DBEs (dollars)	D Total to DBEs (number)	E Total to DBEs /Race Conscious (dollars)	F Total to DBEs/Race Conscious (number)	G Total to DBEs/Race Neutral (dollars)	H Total to DBEs/Race Neutral (number)	I Percentage of total dollars to DBEs
8. Prime contracts awarded this period									
9. Subcontracts awarded/committed this period									
TOTAL									

DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD BREAKDOWN BY ETHNICITY & GENDER	A Black American	B Hispanic American	C Native American	D Subcont. Asian American	E Asian-Pacific American	F Non-Minority Women	G Other (i.e., not of any other group listed here)	H TOTALS (for this reporting period only)	I Year-End TOTALS
10. Total Number of Contracts (Prime and Sub)									
11. Total Dollar Value									

ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD (include subcontracts)	A Number of Prime Contracts Completed	B Total Dollar Value of Prime Contracts Completed	C DBE Participation Needed to Meet Goal (Dollars)	D Total DBE Participation (Dollars)	E Percentage of Total DBE Participation
12. Race Conscious					
13. Race Neutral					
14. Totals					

15. Submitted by (Print Name of Authorized Representative) 16. Signature of Authorized Representative
17. Phone Number 18. Tax Number

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

APPENDIX C TO PART 26—DBE BUSINESS DEVELOPMENT PROGRAM GUIDELINES

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages: a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;

(4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

(1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;

(2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;

(3) The types of contract opportunities being sought, based on the firm's primary line of business; and

(4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

(1) Profitability;

(2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;

(3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;

(4) Ability to obtain bonding;

(5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and

(6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

APPENDIX D TO PART 26—MENTOR-PROTÉGÉ PROGRAM GUIDELINES

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

APPENDIX E TO PART 26—INDIVIDUAL DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

SOCIAL DISADVANTAGE

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of individual social disadvantage must include the following elements:

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—*especially persons with severe disabilities (e.g.*, significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

ECONOMIC DISADVANTAGE

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to

a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

APPENDIX F TO PART 26—UNIFORM CERTIFICATION APPLICATION FORM

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

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

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

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

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

B. Prior/Other Applications and Privileges

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

Section 2: GENERAL INFORMATION

A. Contact Information

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

B. Business Profile

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

C. Relationships with Other Businesses

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

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

D. **Immediate Family Member Businesses**

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

Section 3: OWNERSHIP

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

A. **Background Information**

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

B. **Ownership Interest**

(1) State the number of years during which this owner has been an owner of your firm.
(2) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment.
(3) State the percentage of total ownership control of your firm that this owner possesses.
(4) State the familial relationship of this owner to each other owner of your firm.
(5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.
(6) Check the appropriate box that indicates whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function or title held in that business.
(7) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. **Disadvantaged Status**

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

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

Section 4: CONTROL

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

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

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

(1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
(2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
(3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;
(4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
(5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
(6) Office management;
(7) Marketing and sales;
(8) Purchasing of major equipment;
(9) Signing company checks (for any purpose); and
(10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
(11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
(12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.

C. **Indicate your firm's inventory in the following categories:**
(1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
(2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
(3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
(4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.

D. **Does your firm rely on any other firm for management functions or employee payroll?**
Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. **Financial Information**
(1) Banking Information
(a) State the name of your firm's bank.
(b) State the main phone number of your firm's bank branch.
(c) State the address of your firm's bank branch.
(2) Bonding Information
(a) State your firm's Binder Number.
(b) State the name of your firm's bond agent and/or broker.
(c) State your agent's/broker's phone number.
(d) State your agent's/broker's address.
(e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.

F. **Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:**
State the name and address of each source, the name of the person securing the loan, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.

G. **List all contributions or transfers of assets to/from your firm and to/from any of its owners over the past two years:**
Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. **List current licenses/permits held by any owner or employee of your firm.**
List the name of each person in your firm who holds a professional license or permit, the type of license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.

I. **List the three largest contracts completed by your firm in the past three years, if any.**
List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. **List the three largest active jobs on which your firm is currently working.**
For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AFFIDAVIT & SIGNATURE
Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

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

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

① **Should I apply?**

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

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

② **Is there an easier way to apply?**
If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form. **NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.**

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

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

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

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

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

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

B. Prior/Other Applications and Privileges

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

❑ Yes, on ___/___/___ ❑ No

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

Section 2: GENERAL INFORMATION

A. Contact Information

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

B. Business Profile

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

(7) Type of firm *(check all that apply)*:
- ☐ Sole Proprietorship
- ☐ Partnership
- ☐ Corporation
- ☐ Limited Liability Partnership
- ☐ Limited Liability Corporation
- ☐ Joint Venture
- ☐ Other, Describe:

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

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

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

C. Relationships with Other Businesses

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

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

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

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

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

	Name	Address	Type of Business
1.			
2.			
3.			

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? ☐ Yes ☐ No
If Yes, then list *(attach extra sheets, if needed)*:

	Name	Relationship	Company	Type of Business	Own or Manage?
1.					
2.					

Section 3: OWNERSHIP

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

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address *(street and number)*:	City:	State: Zip:

(5) Gender: ☐ Male ☐ Female	(6) Ethnic group membership *(Check all that apply)*: ☐ Black ☐ Hispanic ☐ Native American ☐ Asian Pacific ☐ Subcontinent Asian ☐ Other *(specify)* _____
(7) U.S. Citizen: ☐ Yes ☐ No	
(8) Lawfully Admitted Permanent Resident: ☐ Yes ☐ No	

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	$
(4) Familial relationship to other owners:		Real Estate	$
		Equipment	$
		Other	$

(5) Shares of Stock: Number Percentage Class Date acquired Method Acquired

(6) Does this owner perform a management or supervisory function for any other business? ☐ Yes ☐ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*)? ☐ Yes ☐ No

If Yes, identify: Name of Business: _____ Function/Title: _____
Nature of Business Relationship:

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

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? *(Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying)*

(2) Has any trust been created for the benefit of this disadvantaged owner(s)? ☐ Yes ☐ No
If Yes, explain *(attach additional sheets if needed)*:

Section 4: CONTROL

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

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

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify for each: Person: _____ Title: _____
Business: Function:

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

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

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

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

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

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

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

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

(1) Equipment

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

(2) Vehicles

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

(3) Office Space

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

(4) Storage Space

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

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

If Yes, explain:

E. Financial Information

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

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

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

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

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

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

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

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

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

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

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

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

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

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

All Applicants

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

Partnership or Joint Venture

- ☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

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

Trucking Company

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

Regular Dealer

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

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

AFFIDAVIT OF CERTIFICATION

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

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

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

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

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

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

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

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

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

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

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

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

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

Executed on _____ (Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

2

[68 FR 35559, June 16, 2003]

ATTACHMENT 2

SPECIAL PROVISION

000--1966

Disadvantaged Business Enterprise in Federal Aid Contracts

1. Description. The purpose of this Special Provision is to carry out the U. S. Department of Transportation's (DOT) policy of ensuring nondiscrimination in the award and administration of DOT assisted contracts and creating a level playing field on which firms owned and controlled by individuals who are determined to be socially and economically disadvantaged can compete fairly for DOT assisted contracts. If the Disadvantaged Business Enterprise (DBE) goal is greater than zero, Article A, "Disadvantaged Business Enterprise in Federal Aid Contracts", of this Special Provision shall apply to this contract. If there is no DBE goal, Article B, "Race-Neutral DBE Participation", of this Special Provision shall apply to this contract. The percentage goal for DBE participation in the work to be performed under this contract will be shown on the proposal.

A. Article A. Disadvantaged Business Enterprise in Federal Aid Contracts.

1. Policy. It is the policy of the DOT and the Texas Department of Transportation (henceforth the "Department") that DBEs, as defined in 49 CFR Part 26, Subpart A and the Department's DBE Program, shall have the opportunity to participate in the performance of contracts financed in whole or in part with Federal funds. The DBE requirements of 49 CFR Part 26, and the Department's DBE Program, apply to this contract as follows:

a. The Contractor will solicit DBEs through reasonable and available means, as defined in 49 CFR Part 26, Appendix A and the Department's DBE Program, or show a good faith effort to meet the DBE goal for this contract.

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

c. The requirements of this Special Provision shall be physically included in any subcontract.

d. By signing the contract proposal, the Bidder is certifying that the DBE goal as stated in the proposal will be met by obtaining commitments from eligible DBEs or that the Bidder will provide acceptable evidence of good faith effort to meet the commitment. The Department will determine the adequacy of a Contractor's efforts to meet the contract goal, within 10 business days,

2. Definitions.

a. "Broker" is an intermediary or middleman that does not take possession of a commodity or act as a regular dealer selling to the public.

b. "Disadvantaged Business Enterprise" or "DBE" is defined in the standard specifications, Article 1, Definition of Terms.

c. "DBE Joint Venture" means an association of a DBE firm and 1 or more other firm(s) to carry out a single business enterprise for profit for which purpose they 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.

d. "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).

e. "Federal Aid Contract" is any contract between the Texas Department of Transportation and a Contractor which is paid for in whole or in part with DOT financial assistance.

f. "Good Faith Effort" means efforts to achieve a DBE goal or other requirement of this Special Provision which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

g. "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."

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

i. "Race-neutral DBE Participation" means any participation by a DBE through customary competitive procurement procedures.

j. "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. To be a regular dealer, the firm must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question.

A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock if it 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. Brokers, packagers, manufacturers' representatives, or other persons who arrange or expedite transactions shall not be regarded as a regular dealer.

k. "Texas Unified Certification Program" or "TUCP" provides one-stop shopping to applicants for certification, such that applicants are required to apply only once for a DBE certification that will be honored by all recipients of federal funds in the state. The TUCP by Memorandum of Agreement established six member entities to serve as certifying agents for Texas in specified regions.

3. Contractor's Responsibilities. These requirements must be satisfied by the Contractor.

a. After conditional award of the contract, the Contractor shall submit a completed Form SMS.4901 "DBE Commitment Agreement", From SMS 4901-T "DBE Trucking Commitment Agreement", or Form SMS.4901-MS "DBE Material & Supplier Commitment Agreement" for each DBE he/she intends to use to satisfy the DBE goal or a good faith effort to explain why the goal could not be reached, so as to arrive in the Department's Office of Civil Rights (OCR) in Austin, Texas not later than 5:00 p.m. on the 10th business day, excluding national holidays, after the conditional award of the contract. When requested, additional time, not to exceed 7 business days, excluding national holidays, may be granted based on documentation submitted by the Contractor.

b. DBE prime Contractors may receive credit toward the DBE goal for work performed by his/her own forces and work subcontracted to DBEs. A DBE prime must make a good faith effort to meet the goals. In the event a DBE prime subcontracts to a non-DBE, that information must be reported on Form SMS.4902.

c. A Contractor who cannot meet the contract goal, in whole or in part, shall make adequate good faith efforts to obtain DBE participation as so stated and defined in 49 CFR Part 26, Appendix A. The following is a list of the types of action that may be considered as good faith efforts. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- Soliciting through all reasonable and available means (e.g. attendance at prebid meetings, advertising, and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The solicitation must be done within sufficient time to allow the DBEs to respond to it. Appropriate steps must be taken to follow up initial solicitations to determine, with certainty, if the DBEs are interested.

- 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 Contractor might otherwise prefer to perform the work items with its own forces.
- 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.
- Negotiating in good faith with interested DBEs to make a portion of the work available to DBE subcontractors and suppliers and 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 negotiations 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.
- A Bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional cost involved in finding and using DBEs is not in itself sufficient reason for a bidders failure to meet the Contract DBE goal as long as such cost are reasonable. Also, the ability or desire of the Contractor to perform the work of the Contract with its own organization does not relieve the Bidder of the responsibility to make good faith effort. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
- 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 cause for the rejection or non-solicitation of bids and the Contractors efforts to meet the project goal.
- Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or Contractor.
- Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- 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.

- If the Program Manager of the OCR determines that the Contractor has failed to meet the good faith effort requirements, the Contractor will be given an opportunity for reconsideration by the Director of the OCR.

d. Should the bidder to whom the contract is conditionally awarded refuse, neglect or fail to meet the DBE goal or comply with good faith effort requirements, the proposal guaranty filed with the bid shall become the property of the state, not as a penalty, but as liquidated damages to the Department.

e. The preceding information shall be submitted directly to the Office of Civil Rights, Texas Department of Transportation, 125 E. 11th Street, Austin, Texas 78701-2483.

f. The Contractor shall not terminate for convenience a DBE subcontractor named in the commitment submitted under Section 1.A.3.a, of this Special Provision. Prior to terminating or removing a DBE subcontractor named in the commitment, the Contractor must have a written consent of the Department.

g. The Contractor shall also make a good faith effort to replace a DBE subcontractor that is unable to perform successfully with another DBE, to the extent needed to meet the contract goal. The Contractor shall submit a completed Form 4901 "DBE Commitment Agreement", From SMS 4901-T "DBE Trucking Commitment Agreement", or Form SMS.4901-MS "DBE Material & Supplier Commitment Agreement" for the substitute DBE firm(s). Any substitution of DBEs shall be subject to approval by the Department. Prior to approving the substitution, the Department will request a statement from the DBE concerning it being replaced.

h. The Contractor shall designate a DBE liaison officer who will administer the Contractor's DBE program and who will be responsible for maintenance of records of efforts and contacts made to subcontract with DBEs.

i. Contractors are encouraged to investigate the services offered by banks owned and controlled by disadvantaged individuals and to make use of these banks where feasible.

4. Eligibility of DBEs.

a. The member entities of the TUCP certify the eligibility of DBEs and DBE joint ventures to perform DBE subcontract work on DOT financially assisted contracts.

b. The Department maintains the Texas Unified Certification Program DBE Directory containing the names of firms that have been certified to be eligible to participate as DBE's on DOT financially assisted contracts. This Directory is available from the Department's OCR. An update of the Directory can be found on the Internet at http://www.dot.state.tx.us/business/tucp/default.htm.

c. Only DBE firms certified at the time commitments are submitted are eligible to be used in the information furnished by the Contractor as required under Section 1.A.3.a. and 3.g. above. For purposes of the DBE goal on this project, DBEs will only be allowed to perform work in the categories of work for which they are certified.

d. Only DBE firms certified at the time of execution of a contract/subcontract/purchase order, are eligible for DBE goal participation.

5. Determination of DBE Participation. When a DBE participates in a contract, only the values of the work actually performed by the DBE, as referenced below, shall be counted by the prime contractor toward DBE goals:

a. The total amount paid to the DBE for work performed with his/her own forces is counted toward the DBE goal. 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 subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

b. A Contractor may count toward its DBE goal a portion of the total value of the contract amount paid to a DBE joint venture equal to the distinct, clearly defined portion of the work of the contract performed by the DBE.

(1) A Contractor may count toward its DBE goal only expenditures to DBEs that perform a commercially useful function (CUF) in the work of a contract or purchase order. A DBE is considered to perform a CUF 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 CUF, 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.

In accordance with 49 CFR Part 26, Appendix A, guidance concerning Good Faith Efforts, contractors may make efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services. Contractors may not however, negotiate the price of materials or supplies used on the contract by the DBE, nor may they determine quality and quantity, order the materials themselves, nor install the materials (where applicable), or pay for the material themselves. Contractors however, may share the quotations they receive from the material supplier with the DBE firm, so that the DBE firm may negotiate a reasonable price with the material supplier.

In all cases, prime or other non-DBE subcontractor assistance will not be credited toward the DBE goal.

(2) A DBE does not perform a CUF 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.

Consistent with industry practices and the DOT/Department's DBE program, a DBE subcontractor may enter into second-tier subcontracts, amounting up to 70% of their contract. Work subcontracted to a non-DBE does not count towards DBE goals. If a DBE does not perform or exercise responsibility for at least 30% 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, it will be presumed that the DBE is not performing a CUF

(3) A DBE trucking firm (including an owner operator who is certified as a DBE is considered to be performing a CUF when the DBE is responsible for the management and supervision of the entire trucking operation on a particular contract and the DBE itself owns and operates at least 1 fully licensed, insured, and operational truck used on the contract.

(a) The Contractor receives credit for the total value of the transportation services the DBE provides on a contract using trucks it owns, insures, and operates using drivers it employs.

(b) 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.

(c) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services provided by the DBE-owned trucks on the contract. Additional participation by non-DBE lessees receive credit only for the fee or commission it receives as result of the lease arrangement

(d) A lease must indicate that the DBE has exclusive use of and control over the trucks giving the DBE absolute priority for use of the leased trucks. Leased trucks must display the name and identification number of the DBE.

(4) When a DBE is presumed not to be performing a CUF the DBE may present evidence to rebut this presumption.

(5) Project materials or supplies acquired from an affiliate of the prime contractor can not directly or indirectly (2^{nd} or lower tier subcontractor) be used for DBE goal credit.

c. A Contractor may count toward its DBE goals expenditures for materials and supplies obtained from a DBE manufacturer, provided that the DBE assumes the actual and contractual responsibility for the materials and supplies. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1) If the materials or supplies are obtained from a DBE manufacturer, count 100% of the cost of the materials or supplies toward DBE goals. (Definition of a DBE manufacturer found at 1A.c.(1) of this provision.)

For purposes of this Section (1.A.c.(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) If the materials or supplies are purchased from a DBE regular dealer, count 60% of the cost of the materials or supplies toward DBE goals.

For purposes of this Section (1.A.5.c.(2)), a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business:

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone or asphalt without owning, operating, or maintaining a place of business as provided in the first paragraph under Section 1.A.5.c.(2), if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of Section 1.A.5.c.(2).

(3) With respect to materials or supplies purchased from DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any

portion of the cost of the materials and supplies themselves toward DBE goals.

(4) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

d. If the Contractor chooses to assist a DBE firm, other than a manufacturing material supplier or regular dealer, and the DBE firm accepts the assistance, the Contractor may act solely as a guarantor by use of a two-party check for payment of materials to be used on the project by the DBE. The material supplier must invoice the DBE who will present the invoice to the Contractor. The Contractor may issue a joint check to the DBE and the material supplier and the DBE firm must issue the remittance to the material supplier. No funds shall go directly from the Contractor to the material supplier. The DBE firm may accept or reject this joint checking arrangement.

The Contractor must obtain approval from the Department prior to implementing the use of joint check arrangements with the DBE. Submit to the Department, Joint Check Approval Form 2178 for requesting approval. Provide copies of cancelled joint checks upon request. No DBE goal credit will be allowed for the cost of DBE materials that are paid by the Contractor directly to the material supplier.

e. No DBE goal credit will be allowed for supplies and equipment the DBE subcontractor leases from the contractor or its affiliates.

f. No DBE goal credit will be allowed for the period of time determined by the Department that the DBE was not performing a CUF. The denial period of time may occur before or after a determination has been made by the department. In case of the denial of credit for non-performance of a CUF of a DBE, the Contractor will be required to provide a substitute DBE to meet the contract goal or provide an adequate good faith effort when applicable.

6. Records and Reports.

a. The Contractor shall submit monthly reports, after work begins, on DBE payments to meet the DBE goal and for DBE or HUB race-neutral participation. Report payments made to non-DBE HUBs. The monthly report is to be sent to the Area Engineer. These reports will be due within 15 days after the end of a calendar month. These reports will be required until all DBE subcontracting or material supply activity is completed. Form SMS.4903, "DBE Progress Report," is to be used for monthly reporting. Form. SMS.4904, "DBE Final Report," is to be used as a final summary of DBE payments submitted upon completion of the project. The original final report

b. DBE subcontractors and/or material suppliers should be identified on the monthly report by Vendor Number, name, and the amount of actual payment made to each during the monthly period. Negative reports are required when no activity has occurred in a monthly period.

c. All such records must be retained for a period of 3 years following completion of the contract work, and shall be available at reasonable times and places for inspection by authorized representatives of the Department or the DOT. Provide copies of subcontracts or agreements and other documentation upon request.

d. Prior to receiving final payment, the Contractor shall submit Form SMS.4904, "DBE Final Report". If the DBE goal requirement is not met, documentation supporting Good Faith Efforts, as outlined in Section 1.A.3.c of this Special Provision, must be submitted with the "DBE Final Report."

e. Provide a certification of prompt payment, the Prompt Payment Certification Form 2177, to certify that all subcontractors and suppliers were paid from the previous months payments and retainage was released for those whose work is complete. Submit the completed form each month and the month following the month when final acceptance occurred at the end of the project.

7. Compliance of Contractor. To ensure that DBE requirements of this DOT assisted contract are complied with, the Department will monitor the Contractor's efforts to involve DBEs during the performance of this contract. This will be accomplished by a review of monthly reports submitted to the Area Engineer by the Contractor indicating his progress in achieving the DBE contract goal, and by compliance reviews conducted on the project site by the Department.

The Contractor shall receive credit toward the DBE goal based on actual payments to the DBE subcontractor. The Contractor shall notify the Area Engineer if he/she withholds or reduces payment to any DBE subcontractor. The Contractor shall submit an affidavit detailing the DBE subcontract payments prior to receiving final payment for the contract.

Contractors' requests for substitutions of DBE subcontractors shall be accompanied by a detailed explanation which should substantiate the need for a substitution. The Contractor may not be allowed to count work on those items being substituted toward the DBE goal prior to approval of the substitution from the Department.

The prime Contractor is prohibited from providing work crews and equipment to DBEs. DBE Goal credit for the DBE subcontractors leasing of equipment or purchasing of supplies from the prime contractor or its affiliates is not allowed.

When a DBE subcontractor named in the commitment under Section 1.A.3.a. of this Special Provision, is terminated or fails to complete its work on the contract for any reason, the prime contractor is required 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.

A Contractor's failure to comply with the requirements of this Special Provision shall constitute a material breach of this contract. In such a case, the Department reserves the right to terminate the contract; to deduct the amount of DBE goal not accomplished by DBEs from the money due or to become due the Contractor, or to secure a refund, not as a penalty but as liquidated damages to the Department or such other remedy or remedies as the Department deems appropriate.

Forward Form 2371, "DBE Trucking Credit Worksheet," completed by the DBE trucker every month DBE credit is used.

B. Article B. Race-Neutral Disadvantaged Business Enterprise Participation. It is the policy of the DOT that Disadvantaged Business Enterprises (DBE) as defined in 49 CFR Part 26 Subpart A, be given the opportunity to compete fairly for contracts and subcontracts financed in whole or in part with Federal funds and that a maximum feasible portion of the Department's overall DBE goal be met using race-neutral means. Consequently, if there is no DBE goal, the DBE requirements of 49 CFR Part 26, apply to this contract as follows:

The Contractor will offer DBEs as defined in 49 CFR Part 26, Subpart A, the opportunity to compete fairly for contracts and subcontractors financed in whole or in part with Federal funds. Race-Neutral DBE and non-DBE HUB participation on projects with no DBE goal shall be reported on Form SMS.4903, "DBE or HUB Progress Report" and submitted to the Area Engineer each month and at project completion. Payments to DBEs reported on Form SMS.4903 are subject to the requirements of Section 1.A.5, "Determination of DBE Participation."

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

SPECIAL PROVISION

003—020

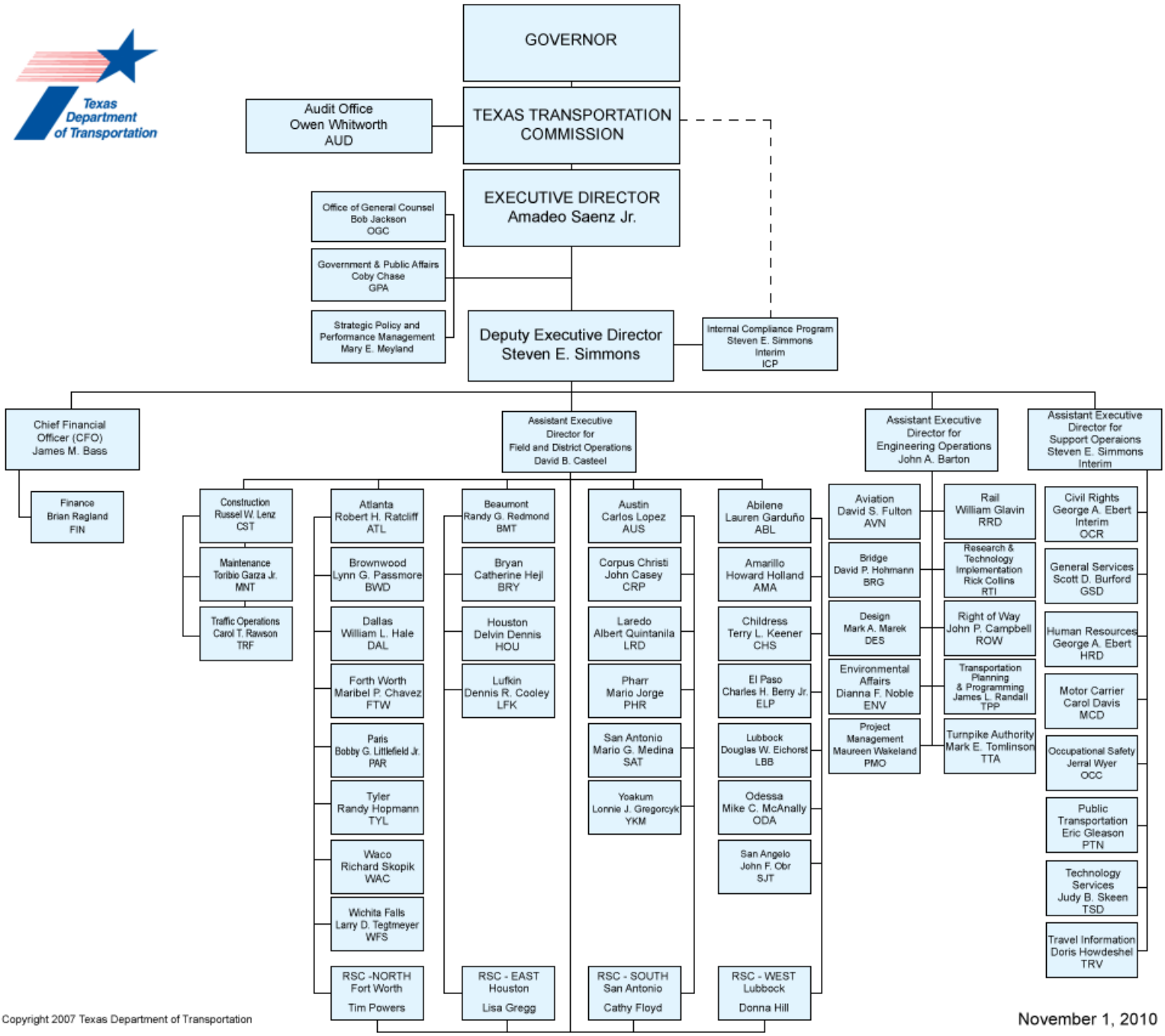
Award and Execution of Contract

For this project, Item 003, "Award and Execution of Contract," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 3.4, Execution of Contract, Section B, Bonds is supplemented by the following:

Provide a retainage bond in the amount of 10% of the total amount paid on the contract. The retainage bond is to be used as a guaranty for the protection of any claimants and the Department for overpayments, liquidated damages, and other deductions or damages owed by the Contractor in connection with the Contract.

ATTACHMENT 3



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November 1, 2010

ATTACHMENT 4

2004 Specifications

SPECIAL PROVISION
009---007
Measurement and Payment

For this project, Item 009, "Measurement and Payment," of the Standard Specifications, is hereby amended with respect to the clauses cited below, and no other clauses or requirements of this Item are waived or changed hereby.

Article 9.6. Progress Payments, Section A, Retainage is voided and replaced by the following:

A. Retainage. Retainage will not be withheld on this project.

Article 9.6. Progress Payments, Section B, Payment Provisions for Subcontractors is voided and replaced by the following:

B. Payment Provisions for Subcontractors. For the purposes of this Article only, the term subcontractor includes suppliers and the term work includes materials provided by suppliers at a location approved by the department. Pay the subcontractors for work performed within 10 days after receiving payment for the work performed by the subcontractor. Also, pay any retainage on a subcontractor's work within 10 days after satisfactory completion of all of the subcontractor's work. Completed subcontractor work includes vegetative establishment, test, maintenance, performance, and other similar periods that are the responsibility of the subcontractor.

For the purpose of this Section, satisfactory completion is accomplished when:

- the subcontractor has fulfilled the Contract requirements of both the Department and the subcontract for the subcontracted work, including the submittal of all information required by the specifications and the Department; and
- the work done by the subcontractor has been inspected and approved by the Department and the final quantities of the subcontractor's work have been determined and agreed upon.

The inspection and approval of a subcontractor's work does not eliminate the Contractor's responsibilities for all the work as defined in Article 7.14, "Contractor's Responsibility for Work."

The Department may pursue actions against the Contractor, including withholding of estimates and suspending the work, for noncompliance with the subcontract requirements of this Section upon receipt of written notice with sufficient details showing the subcontractor has complied with contractual obligations as described in this Article.

These requirements apply to all tiers of subcontractors. Incorporate the provisions of this Article into all subcontract or material purchase agreements.

ATTACHMENT 5

ATTACHMENT 5

TxDOT Expressway

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TUCP DBE Alphabetic Listing - A

Last Update: Monday, June 12, 2006

A | B | C | D | E | F | G | H | I | J | K | L | M | N | O | P | Q | R | S | T | U | V | W | X | Y | Z | 0-9

A & A CONSTRUCTION COMPANY
P.O. BOX 202212
ARLINGTON, TX 760060000
Phone: 817-267-2757
Types of Work Performed: Highway, Street, and Bridge Construction(237310)
Other Construction Material Merchant Wholesalers(423390)
Site Preparation Contractors(238910)
District(s): STATEWIDE DISTRICTS

***Certified by:** NCTRCA
Region of: NCTRCA
Email: irene@aaconstructionco.com
Fax: 817-267-2887

A & A OFFICE PRODUCTS
P.O. BOX 20292
HOUSTON, TX 772250292
Phone: 713-664-4849
Types of Work Performed: Furniture Stores(442110)
District(s): STATEWIDE DISTRICTS

***Certified by:** HOUSTON
Region of: HOUSTON
Email: antoniochua@pdq.net
Fax: 713-554-4173

A & B COLLEGE EXPOSURE PROGRAM
P.O. BOX 260952
CORPUS CHRISTI, TX 784260000
Phone: 361-387-1702
Types of Work Performed: Educational Support Services(611710)
District(s): STATEWIDE DISTRICTS

***Certified by:** CCRTA
Region of: CCRTA
Email: r21650@aol.com
Fax: 361-767-6630

A & B DELIVERY SERVICES
5429 CHERRY GLEN LANE
DALLAS, TX 752320000
Phone: 214-371-1756
Types of Work Performed: General Freight Trucking, Local(484110)
District(s): STATEWIDE DISTRICTS

***Certified by:** NCTRCA
Region of: NCTRCA
Email:
Fax: 214-375-8938

A & B ENVIROMENTAL SERVICES, INC.
10100 EAST FREEWAY, SUITE 100
HOUSTON, TX 77029
Phone: 713-453-6060
Types of Work Performed: Testing Laboratories(541380)
District(s): STATEWIDE DISTRICTS

***Certified by:** HOUSTON
Region of: HOUSTON
Email: kittu2@hal-pc.org
Fax: 713-453-6091

A & D INSPECTIONS
P. O. BOX 11106
HOUSTON, TX 77293

***Certified by:** HOUSTON
Region of: HOUSTON
Email: leep_south@yahoo.com

ATTACHMENT 6

Texas Department of Transportation

Overall Annual DBE Goal for Highway Design and Construction

Fiscal Year 2011-2013



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SECTION 1: EXECUTIVE SUMMARY

The Texas Department or Transportation (TxDOT) submits the following Disadvantaged Business Enterprise (DBE) goal methodology to the United States Department of Transportation (DOT) Federal Highway Administration (FHWA) for review in accordance with 49 Code of Federal Regulations (CFR) Part 26.45.

Effective March 5, 2010, recipients of financial assistance from the DOT that are required to implement a DBE program will no longer submit DBE goal setting methodology and process for approval every year. The annual overall DBE goal based on approved submissions will be in place for three years. The goal will remain the same for each year of the approved three year period until the next review cycle. TxDOT will make a good faith effort to meet the goal every year. The substantive goal setting requirements are not changed. TxDOT will use the time between submissions to improve the overall quality of the goal setting process by developing systems to collect and analyze data needed to support the goal setting methodologies and will fully engage stakeholders and the public in meaningful ways to obtain relevant information. TxDOT will submit its first three-year DBE Goal Methodology for FY 2011-2013.

Some sub-recipients of TxDOT highway design and construction funds are electing to adopt the TxDOT Memorandum of Understanding (MOU) for DBE Program and our methodology to establish their overall DBE goal. Attachment A provides a list of entities that have signed an MOU with TxDOT. Attachment B provides an example of an MOU.

Process Summary

The goal methodology consists of two steps, the base figure for the relative availability of DBEs and any adjustments to the base figure based on available evidence. In Step 1, the base figure is established through the 2009 Texas Disparity Study and takes into account an estimated weight of expenditures based on contracts projected for the upcoming year. In Step 2, TxDOT reviews available information and new evidence presented in a public consultation meeting and takes it into account in determining an adjustment to the base figure. The base figure and the adjustments to the base figure are used to determine the overall goal. The overall goal is further defined as race-neutral and race-conscious based on the amount that TxDOT plans to meet through race-neutral means.

TxDOT provides for two types of opportunities for public participation. The first type of opportunities included a cluster of four public consultation meetings held throughout the State of Texas in June 2010. The public was invited to discuss evidence that would influence the relative availability of DBE or other issues that influence DBE participation. The public meetings and discussion did not reveal new evidence that could influence DBE participation. In the second type of opportunity,

the public can review the methodology until August 31, 2010 and submit comments by September 14, 2010. If there are any comments that impact the DBE Goal Methodology, TxDOT will forward USDOT an amendment with said changes.

Results Summary

The DBE goal methodology justifies an FY 2011-2013 overall DBE goal of 12.20%. TxDOT plans to meet the overall goal by 7.00% race-neutral means and the remainder of 5.20% through race-conscious measures. TxDOT will monitor DBE participation for federal-aid highway design and construction projects throughout the FY 2011-2013 period and will make annual evaluations to determine if market conditions warrant adjustments to the DBE goal. TxDOT will also monitor race-conscious and race-neutral achievements of the DBE goal and make necessary adjustments as needed based on the DBE program guidelines.

SECTION 2: PROCESS

The process for setting an overall goal is defined in § 26.45. The CFR identifies August 1st as the submittal date (see §26.45(f)(1)).

The methodology includes: a description of the methods used to establish the goal, the base figure and evidence used for its calculation, summary listing of available evidence and wherever necessary an explanation on why it was not used, proposed projections for the portions of the goal to be met through race-neutral and race-conscious means (see § 26.45(f)(3)). The methodology also expands on the TxDOT's effort to obtain public participation through public consultation for evidence that may influence adjustments to the base figure and by extending public comment on the proposed methodology (see § 26.45(g)).

TxDOT is not required to have the operating administration's concurrence to implement the DBE goal; however if the operating administration's review suggest there are concerns over the methodology, it may, after consulting with TxDOT, adjust the overall goal or require TxDOT to do so (see § 26.45(f)(4)).

TxDOT's overall goal provides for the participation of all certified DBEs. The overall goal is NOT subdivided into group-specific goals (see §26.45(h)).

SECTION 3: STEP 1 – ESTABLISH BASE FIGURE

For Step 1, TxDOT takes into account available evidence, such as the newly completed 2009 Texas Disparity Study and the estimated weight of expenditures, in determining the base figure for the relative availability of DBEs. In determining the base figure, TxDOT considered the type of contracts anticipated for the upcoming year. This calculation results in a base figure of 11.45%.

TxDOT begins the goal setting process by determining the base figure for the relative availability of DBEs (see §26.45(c)). TxDOT's best available data includes a 2009 Texas Disparity Study as described in §26.45(c)(3).

2009 Texas Disparity Study

In 2008 the State of Texas commissioned a disparity study to update its 1994 State of Texas Disparity Study. This disparity study was conducted in 2009 and completed in early 2010. The purpose of the study was to provide a comprehensive review of the state's utilization of historically underutilized businesses (HUB). The disparity study specifically targeted HUBs, however most of the heavy construction firms identified are also DBEs. Furthermore, the majority of the heavy construction data comes from TxDOT participation. The study included all state agencies, state medical institutions and institutions of higher learning. Some of the key objectives of the study were to examine if disparities exist between the ready, willing and able HUBs and the actual utilization of HUBs in state contracting; and to determine the extent to which any disparities in the utilization of available HUBs might be impacted by discrimination.

The disparity study included extensive data from sate prime contractor and subcontractor utilization for 210 state agencies and institutions of higher learning. It included availability data was based on bids, bidders, prequalified firms, vendors, census, business surveys, and Dunn & Bradstreet. It also contained anecdotal information which came from four public hearings and a survey of 1,032 firms, five focus groups, 102 individual firm interviews, 142 Web surveys, and policy interviews with 60 Texas procurement and HUB Program staff. It also included a review of private sector disparities base on data from the US Census Bureau, local building permits, survey responses, Reed Construction Data and the National Survey of Small Business Finance.

TxDOT uses the 2009 Texas Disparity Study as the approach for calculating the relative availability of DBE's in the State of Texas because it is the most current and comprehensive information available on the relative availability of minority and non-minority women-owned businesses.

Estimated Weight of Expenditures

In order to more accurately define relative availability of DBEs in DOT-assisted contracts, TxDOT takes into consideration the types of contracts anticipated in the upcoming year against the relative availability of DBEs.

TxDOT identifies two types of Federal-aid contracts; highway construction and engineering/architecture contracts. Further analysis indicates that the ratio of contract types, estimated weight of expenditures, indicates low projections for engineering/architecture work. The proportion of federal aid for highway

construction and engineering/architecture contracts remains the same for FY 2011-2013.

Table 3.1: Estimated Weight of Expenditures

Industry	Percent
Highway Construction	98%
Engineering/Architecture	2%

Base Figure Calculation

The base figure is calculated by combining the proportion of the relative availability of DBEs in highway construction and the proportion in engineering/architecture. The proportion of relative availability of DBEs in highway construction is the calculated ratio of DBEs in highway construction (DBE in highway construction divided by all firms in highway construction) against the anticipated portion of highway construction work. The same evaluation is performed on the relative availability of DBEs in engineering/architecture work. The calculation (see Figure 3.1) results in a base figure of 11.45%.

Figure 3.1: Base Figure Calculation

$$\text{Base Figure} = \left[0.98\left(HeavyConstructionRWA\right) + 0.02\left(EngineringRWA\right)\right]$$
$$= \left[0.98\left(11.20\%\right) + 0.02\left(23.6\%\right)\right]$$
$$= \left[10.976 + 0.472\right]$$
$$= 11.448$$

Base Figure

11.45%

SECTION 4: STEP 2 – ADJUSTMENTS TO BASE FIGURE

TxDOT examines all available evidence to determine any adjustments to the base figure. A summary of the evidence considered includes: DBE directory analysis, TxDOT modified bidders list, evidence made available through the Public Consultation Meetings, and past participation.

Adjustment 1: Modified Bidders List

There are various methods for determining the relative availability of DBEs. (see §26.45(c)). TxDOT's traditional method for calculating the relative availability is through the modified bidders list, however for FY 2010-2013 there new and better information available through the 2009 Texas Disparity Study. When using the bidders list approach TxDOT used a modified version of the bidders list described in §26.45(c)(2). TxDOT uses this modified bidders list as an "Alternative Method" as described in §26.45(c)(5). The justification for this modified bidders list is that TxDOT uses a Low-Bid method to procure highway design and construction contracts. This method does not gather subcontracting information from non-successful bidders, therefore there is no subcontract list for non-successful bidders.

When using the modified bidders list, the first step is to determine the number of DBEs that bid on, or were awarded, DOT-assisted prime contracts and subcontracts from October 2008 to July 2010. Since the bidders list indicates "active" status by fiscal year, TxDOT needs to use this time range to obtain at least one full year of participation. To maintain a consistent method of calculation, TxDOT uses the same time period of evaluation every time it calculates the bidders file for the year. The next step is to determine the number of businesses that bid on, or were awarded, DOT-assisted prime contracts and subcontracts for the same period. The base figure is calculated by dividing the DBE bidders by all bidders.

TxDOT's Modified Bidders List consists of all available data on primes and subcontractors that bid on or were awarded DOT-assisted contracts, including DBEs. The list is qualified further by including appropriate data from pre-qualified highway construction contractors, pre-certified professional service providers, and other subcontractors and material suppliers on highway construction projects. The bidders list determines firms that are ready, willing, and able to participate in TxDOT's. (See Table 4.1)

Table 4.1: TxDOT's Modified Bidders List

	All Firms	Certified DBE Firms
Highway Construction	1,949	241
Engineering/Architecture	322	89

Analysis of Available Bidders

There are concerns of TxDOT's Modified Bidders List under-representing subcontractors, because it does not have available information on subcontractors that bid to contractors on non-winning bids. Traditionally, TxDOT has indicated that the large volume of contracts and subcontracts available provides a statistically significant sample base that sustains the unavailable information.

In order to validate the modified bidders list for the 2010 DBE Goal Methodology, TxDOT conducted a survey in June 2010 which requested subcontract bid information from Prime bidders on successful and unsuccessful bids on federal aid projects. TxDOT compared the sample information from the survey against the subcontract bid information from low-bid contractors used to put together the modified bidders list and concluded that there was a statistically insignificant difference in DBE availability between the two groups.

TxDOT plans to actively coordinate with stakeholders involved to conduct bi-annual surveys; in the winter (December) and summer (July) construction seasons. The surveys will continue to sample subcontractor bids from both successful and unsuccessful Prime bidders. The results from these surveys will be compared to the

modified bidders list and current methodology to check for significant differences throughout the year.

Relative Availability Calculation

A base figure is calculated by combining the proportion of the relative availability of DBEs in highway construction and the proportion in engineering/architecture. The proportion of relative availability of DBEs in highway construction is the calculated ratio of DBEs in highway construction (DBE in highway construction divided by all firms in highway construction) against the anticipated portion of highway construction work. The same evaluation is performed on the relative availability of DBEs in engineering/architecture work. The calculation (see Figure 4.1) results in a relative availability of 12.67%.

Figure 4.1: Relative Availability Calculation

$$\text{Base Figure} = \left[0.98\left(\frac{\#\ HighwayConstructionDBE}{\#\ HighwayConstructionFirms} \right) + 0.02\left(\frac{\#\ EngineeringArchitectureDBE}{\#\ EngineeringArchitectureFirms} \right) \right] \times 100$$

$$= \left[0.98\left(\frac{241}{1{,}949} \right) + 0.02\left(\frac{89}{322} \right) \right] \times 100$$

$$= \left[0.121180 + 0.005527 \right] \times 100$$

$$= 0.126707 \times 100$$

$$= 12.67$$

A comparison of the DBE availability derived from the modified bidders list slightly larger from the availability derived from the Texas Disparity Study. The Modified Bidders List approach yields a DBE availability of 12.67% while the Texas Disparity Study an availability of 11.45%. We feel that part of this variance comes from the fact that the modified bidders list is exclusive to TxDOT's bidders. This modified bidders file approach is traditionally the preferred method of calculating DBE ready, willing and able for TxDOT funds, however it is used as adjustment evidence for the FY 2011-2013 Goal Methodology because the 2009 Texas Disparity Study is recent large scale study that is a very comprehensive on the availability in the State of Texas. We determined that this available information justifies a +0.75% adjustment to the DBE Goal.

Adjustment 2: DBE Directory

TxDOT preformed an analysis to determine the relative availability of DBEs by utilizing the TUCP DBE directory and the Census Bureau's 2007 County Business Patterns (CBP) data as suggested §26.45(c). The source for DBEs is the TUCP DBE Directory (www.dot.state.tx.us/business/tucpinfo.htm). The relevant highway construction North American Industry Classification System (NAICS) codes were identified and used to determine the availability of the business. The overall number

of all ready, willing and able businesses in TxDOT's market is determined by the 2007 Census Bureau's County Business Patterns data (see Table 4.2).

Table 4.2: Relative Availability Base on DBE Directory

NAICS Code*	Industry	All Firms	DBE Firms
237110	Underground utility	1,114	68
237130	Underground utility	539	10
237310	Asphalt, Fencing, Minor Structures	748	154
237990	Rest Areas	326	18
238110	Concrete, Major Structures	1,623	51
238210	Illumination, Traffic Control Devices	4,612	70
238320	Painting	1,569	27
238910	Earthwork	2,069	58
238990	Material Suppliers	2,164	101
484000	Hauling	8,406	285
541310	PS Architects	1,537	70
541330	PS Engineers	4,597	268
541370	PS Surveyors	777	22
561730	Landscaping	4,231	72
Total		**34,312**	**1,274**

***** The NAICS includes all 6-digit NAICS under this code.

The base figure is calculated by taking the identified availability of DBEs against the identified availability of identified businesses. The calculation (see Figure 4.2) results in a base figure of 5.36%.

Figure 4.2: Base Figure Calculation

$$\text{Base Figure} = \left(\frac{\#DBE}{\#AllFirms}\right)\times 100$$
$$= \left(\frac{1{,}274}{34{,}312}\right)\times 100$$
$$= 3.71\%$$

A comparison of the DBE availability derived from the DBE Directory/CBP is significantly smaller from the availability derived from the TxDOT's Bidders List. The Directory approach yields a DBE availability of 3.71% while the 2009 Disparity Study shows a relative availability of 11.20% and the TxDOT's modified bidders list yields a relative availability of 12.67%. We feel that this significant variance requires further

evaluation and may be due in part to the identified highway NAICS are to restrictive. Another factor that may be influencing this variance is the fact that many of the firms identified do business with other recipients of DOT funds, but do not do business with TxDOT. We determined that this available information justifies a -1.00% adjustment to the DBE Goal.

Adjustment 3: Past Participation

TxDOT determines that an adjustment for past participation is appropriate. TxDOT utilized goal setting guidelines ("Tips for Goal-Setting in the DBE Program") from the Office of Small and Disadvantaged Business Utilization (OSDBU) web site which includes a method for evaluating an adjustment based on past participation. This adjustment considers past participation as a relative gauge for the anticipated participation for FY 2011-2013.

The adjustment to the base figure is determined with the median of past participation. The median is used instead of the average or mean because it excludes outliners; abnormally high or low numbers. TxDOT uses six (6) completed years of past participation (see Table 4.3) in computing the median value; therefore the value is determined by averaging the two middle values. The resulting calculation yields a median value of 12.46% (see Figure 4.3).

Table 4.3: Recent Past DBE Participation

Fiscal Year	Federal Awards	DBE Awards	DBE % Achieved
2004	$2,735,127,722	$360,031,279	13.16%
2005	$3,154,157,201	$378,993,625	12.02%
2006	$2,690,752,367	$342,867,974	12.74%
2007	$2,656,532,841	$307,091,081	11.56%
2008	$1,984,081,620	$291,922,772	14.71%
2009	$2,389,290,441	$290,826,669	12.17%
2010*	$1,123,439,917	$121,077,620	10.78%

***** Note: FY 2010 is not complete. Available figures only include data for the first six-months.

Figure 4.3: Median Value

$= (12.17 + 12.74) \div 2$

$= 12.46\%$

We determined that past participation is a strong indicator on actual DBE participation and that this available information justifies a +1.00% adjustment to the DBE Goal.

Adjustment 4: Public Consultation Evidence

The purpose of the public consultation is to gather evidence and information that can assist in the development of the FY 2011-2013 DBE Goal Methodology. As part of this goal setting process, four public consultation meetings was held in San Antonio,

Houston, Fort Worth and Amarillo. The purpose of the meetings was to meet and consult with "minority, women and general contractor groups, community organizations and other officials or organizations which would be expected to have information concerning the availability of DBEs and non-DBEs, the effects of discrimination on opportunities for DBEs, and TxDOT's efforts to establish a level playing field for the participation of DBEs (see §26.45(g)(1))." (See Attachment C: Public Consultation Meeting Invitees). Business development organizations, chambers of commerce and professional associations were mailed an invitation and a detailed agenda to participate in a face-to-face exchange aimed at gathering information regarding establishing the overall DBE goal. To ensure their participation, telephone follow-ups were made to assess whether or not they have relevant information to the goal setting process.

No new evidence was made available, however participants made comments concerning the market availability and TxDOT efforts to attain race-neutral participation. The information and evidence received was not sufficient in justifying a DBE Goal adjustment.

SECTION 5: ADJUSTED GOAL

All available evidence is taken into consideration to determine the adjustments to the base figure. An adjustment for past participation is appropriate; therefore the base figure is adjusted consideration to all available evidence to reveal the recommended adjusted goal (see Figure 5.1). The recommended DBE Goal for FY 2011-2013 is 12.20%.

Figure 5.1: Adjustment to Base Figure Calculation

Adjusted Goal = Base Figure + Adjustment 1 + …+ Adjustment 4

= 11.45 + 0.75+ -1.00+ 1.00+ 0.00

= 12.20%

Proposed DBE Goal
12.20%

SECTION 6: RACE-NEUTRAL AND RACE CONSCIOUS PARTICIPATION

The goal methodology includes the methods used to compute the DBE goal and a determination of how TxDOT plans to meet the goals through race-neutral and race-conscious measures (see §26.45(f)(3) and §26.51(c)). TxDOT plans to meet the "maximum feasible portion of [the] overall goal by using race-neutral means. (see §26.51(a))."

TxDOT examined the race-neutral attainment for the past six (6) complete years (see Table 6.1) to determine the maximum race-neutral participation. On average,

TxDOT achieved 7.18% (see Figure 6.1) of the goal through race-neutral means. The proposed race-neutral goal for FY 2011-2013 is 7.00%.

Table 6.1: Race-Neutral and Race-Conscious Goal vs. Achievement

	Goals			Achievement		
Fiscal Year	Race-Neutral	Race-Conscious	Overall	Race-Neutral	Race-Conscious	Overall
2004	5.00%	7.44%	12.44%	5.89%	7.27%	13.16%
2005	5.00%	7.70%	12.70%	5.96%	6.06%	12.02%
2006	6.54%	6.00%	12.54%	8.14%	4.60%	12.74%
2007	6.12%	6.00%	12.12%	6.76%	4.80%	11.56%
2008	6.12%	6.00%	12.12%	10.52%	4.19%	14.71%
2009	6.00%	5.00%	11.00%	5.81%	6.36%	12.17%
2010*	4.12%	7.50%	12.62%	5.73%	5.05%	10.78%

***** Note: FY 2010 is not complete. Available figures only include data for the first six-months.

Figure 6.1: Average Race-Neutral

$$= \left(\frac{5.89 + 5.96 + 8.14 + 6.76 + 10.52 + 5.81}{6} \right)$$

$$= \left(\frac{43.08}{6} \right)$$

$$= 7.18$$

Proposed Race Neutral

= 7.00

TxDOT will establish race-conscious measures, contract goals, to meet the balance (see Figure 6.2) of the overall goal (see §26.51(d)). The proposed Race-Conscious Goal for FY 2011-2013 is 5.20%.

Figure 6.2: Race-Conscious Calculation

$$RaceConscious + RaceNeutral = OverallGoal$$

$$RaceConscious = OverallGoal - RaceNeutral$$

$$= 12.20 - 7.00$$

5.20%

SECTION 7: PUBLIC COMMENT

In accordance with § 26.45(g)(2), TxDOT published a Public Notice announcing the proposed overall goal and methodology in general circulations, Texas Register and minority and trade focus papers statewide (see Attachment D: Public Comment Notifications) on June 30, 2010, inviting public review for 30 days and to comment for 45 days. The public will be afforded the opportunity to review the methodology until August 30, 2010 and to submit comments by September 14, 2010.

Office of Civil Rights staff will be available at a public comment meeting on August 17, 2010, at the TxDOT office building at 200 East Riverside Drive in Austin. Staff will provide an overview of the goal-setting process and the FY 2011-2013 DBE Goal Methodology. The public is invited to present oral or written comments at the meeting.

Any comments that warrant a modification to the FY 2011-2013 DBE Goal Methodology will be implemented and forwarded to the appropriate US DOT division.

SECTION 8: ATTACHMENTS

Attachment A: List of Memorandums of Understanding
Attachment B: Sample Memorandum of Understanding
Attachment C: Public Consultation Meeting Invitees
Attachment D: Public Comment Notifications

Attachment A
List of Memorandums of Understanding

The following sub-recipients of TxDOT highway design and construction funds adopted the TxDOT Memorandum of Understanding (MOU) for DBE Programs. The agencies have attended training programs sponsored by TxDOT regarding the DBE Program.

Alamo Regional Mobility Authority
Bexar County
Camino Real Regional Mobility Authority
Central Texas Regional Mobility Authority
City of Abilene
City of Baytown
City of Cedar Park
City of Corpus Christi
City of Forney
City of Leander
City of Manor
City of Pearland
City of San Antonio
City of San Marcos
City of Taylor
Harris County
Hidalgo County
Montgomery County Pass-Through Toll Agreement
North Texas Tollway Authority
Texas Historical Commission
Town of Trophy Club
Travis County
Val Verde County
Webb County
Williamson County

Attachment B
Sample Memorandum of Understanding

MEMORANDUM OF UNDERSTANDING
REGARDING THE ADOPTION OF THE TEXAS DEPARTMENT OF TRANSPORTATION'S FEDERALLY-APPROVED DISADVANTAGED BUSINESS ENTERPRISE PROGRAM BY THE CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

This Memorandum of Understanding is by and between the **TEXAS DEPARTMENT OF TRANSPORTATION ("TxDOT"),** an agency of the State of Texas; and the **CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY ("the CTRMA"),** a Texas regional tollway authority organized and existing pursuant to Chapter 26, Texas Transportation Code.

Whereas, from time to time from CTRMA receives federal funds from the Federal Highway Administration ("FHWA") through TxDOT to assist the CTRMA with the construction of turnpike projects; and

Whereas, the CTRMA, as a sub-recipient of federal funds, is required by 49 CFR 26, to implement a program for disadvantaged business enterprises ("DBEs"), as defined by 49 CFR 26 ("DBE Program"); and

Whereas, TxDOT has implemented a DBE Program that is approved by the Federal Highway Administration (FHWA) pursuant to 49 CFR part 26; and

Whereas, as a condition of receiving federal funds from FHWA through TxDOT, certain aspects of the CTRMA's procurement of construction services are subject to review and/or concurrence by TxDOT; and

Whereas, the CTRMA and TxDOT undertake substantially similar roadway construction projects and construct their respective projects using substantially the same pool of contractors; and

Whereas, the CTRMA desires to implement a federally compliant DBE Program by adopting the TxDOT approved program, as recommended by FHWA; and

Whereas, TxDOT and the CTRMA find it appropriate to enter into this Memorandum of Understanding to memorialize the obligations, expectations and rights each has as related to the CTRMA's adoption of the TxDOT DBE Program to meet the federal requirements;

Now, therefore, TxDOT and the CTRMA, in consideration of the mutual promises, covenants and conditions made herein, agree to and acknowledge the following:

(1) TxDOT has developed a DBE Program and annually establishes a DBE goal for Texas that is federally approved and compliant with 49 CFR 26 and other applicable laws and regulations.

(2) The CTRMA is a sub-recipient of federal assistance for roadway construction projects and, in accordance with 49 CFR § 26.21, must implement a federally approved DBE Program. The CTRMA receives its federal assistance through TxDOT. As a sub-recipient, the CTRMA has the option of developing its own program or adopting and operating under TxDOT's federally approved DBE Program. The FHWA recommends that sub-recipients, such as the CTRMA, adopt the DBE program, administered through TxDOT, and the CTRMA hereby chooses to adopt the TxDOT DBE Program.

(3) This Memorandum of Understanding evidences FHWA's and TxDOT's consent to the adoption of the TxDOT DBE Program by the CTRMA to achieve its DBE participation in CTRMA federally assisted roadway construction projects.

(j) The CTRMA will submit DBE semi-annual progress reports to TxDOT.

(k) The CTRMA will participate in TxDOT sponsored training classes to include topics on DBE Annual Goals, DBE Construction Project Goal Setting, DBE Contract Provisions, and DBE Contract Compliance, which may include issues such as DBE Commitments, DBE Substitution, and Final DBE Clearance. TxDOT will include DBE contractors performing work on the CTRMA projects in the DBE Education and Outreach Programs.

(6) In the event there is a disagreement between TxDOT and the CTRMA about the implementation of the TxDOT DBE Program by the CTRMA, the parties agree to meet within ten (10) days of receiving a written request from the other party of a desire to meet to resolve any disagreement. The parties will make good faith efforts to resolve any disagreement as efficiently as is reasonably possible. If the parties are not able to resolve any material disagreement to the satisfaction of all parties, either party may terminate this Memorandum of Understanding by written notice to the other party and FHWA.

(7) This Memorandum of Understanding becomes effective upon execution by all parties and automatically renews each year unless a party notifies the other parties of its intent to terminate the agreement.

(8) If this Memorandum of Understanding is terminated for any reason, the CTRMA will be allowed reasonable time in which to seek approval for a DBE Program without being deemed non-compliant with 46 CFR Part 26 or with an approved DBE Program.

(9) This Memorandum of Understanding applies only to projects for which the CTRMA is a sub-recipient of federal funds. The CTRMA may also implement a Minority and Women-Owned Small Business Enterprise (M/W/SBE) policy and program that applies to projects for which it is not a sub-recipient of federal funds and which are not subject to the TxDOT DBE Program, The CTRMA may, at its option, use some aspects of the TxDOT DBE Program and other similar programs in implementing its other policies and programs.

(10) The following attachments to this MOU are incorporated as if fully set out herein for all purposes: Attachment A - FHWA Memorandum HCR-1/HIF-1 (relating to access required by the Americans with Disabilities Act of 1990 and Section 504 of the Rehabilitation Act of 1973); Attachment B - SPECIAL PROVISION 000-461; Attachment C - Comprehensive Development Agreement (CDA) DBE Provisions (with TxDOT's DBE Program and its 10 Attachments) and Attachment D - 49 CFR §26.13 (contractual assurances). In the case of any conflict between the SPECIAL PROVISION, the CDA DBE Provisions and TxDOT's DBE Program, the provisions of the first two documents shall prevail in regard to CDAs.

EXECUTED by TxDOT and the CTRMA, acting through each duly authorized official and effective on the latest date signed.

APPROVED AS TO FORM:

By: Bob Jackson Date: 1/18/07

Bob Jackson, General Counsel
Texas Department of Transportation

By: Tom Nielson Date: 1/23/07

Tom Nielson, General Counsel
Central Texas Regional Mobility Authority

The signatories below confirm that they have the authority to execute this MOU and bind their principles.

TEXAS DEPARTMENT OF TRANSPORTATION

By: M. W. Behrens
Michael W. Behrens, P.E.
Executive Director

Date: 1-19-07

CENTRAL TEXAS REGIONAL MOBILITY AUTHORITY

By: Mike Heiligenstein
Mike Heiligenstein
Executive Director

Date: 2/1/07

Attachment C
Public Consultation Meetings Invitees

The following minority, women's and general contractor groups, community organizations and other official and organization which were invited to attend the Public Consultation Meetings.

Abilene Black Chamber of Commerce
Acres Home Center for Business and Economic Development
African American Chamber of Commerce of San Antonio
African American News & Issues
African Chamber of Commerce, D/FW
African-American Chamber of Commerce
AGC of Texas
American Indian Chamber of Commerce of Texas
Beaumont Chamber of Commerce
Bee County Area Hispanic Chamber of Commerce
Bridging the Gap
Bryan-College Station Chamber of Commerce
Business Assistance Center-Innercity Community Dev Center
Camara De Comercio Hispaña De Amarillo (Cacha)
Capital City African American Chamber of Commerce
Childress Chamber of Commerce
Construction Information Network (CIN)
Corpus Christi Bay Area Minority Business Opportunity Center
Corpus Christi Hispanic Chamber of Commerce
Corpus Christi Minority Business Development Center
Dallas Black Chamber of Commerce
Dallas Black Contractors Association
Dallas/ Ft. Worth – MBDC
Dallas/Ft. Worth/Arlington/ MBDC
DFW Native American Chamber of Commerce
Eagle Pass Hispanic Chamber of Commerce
East Texas Council on African-American Affairs
El Mensajero, Inc.
El Paso Black Chamber of Commerce
El Paso Hispanic Chamber of Commerce
El Paso MBDC
El Paso Minority Business Development Center
Fort Worth Hispanic Chamber of Commerce
Fort Worth Metropolitan Black Chamber of Commerce
Greater Austin Hispanic Chamber of Commerce
Greater Dallas Asian American Chamber of Commerce

Greater Dallas Hispanic Chamber of Commerce
Greater Killeen Chamber of Commerce
Greater Marshall Chamber of Commerce
Greater Orange Area Chamber of Commerce
Greater San Antonio Chamber of Commerce
Greater Waco Chamber of Commerce
Hispanic Chamber of Greater Baytown
Hispanic Contractors Association of Dallas/Ft Worth
Houston Citizens Chamber of Commerce
Houston Hispanic Chamber of Commerce
Houston MBDC
Jasper/Lake Sam Rayburn Area Chamber of Commerce
Kilgore Chamber of Commerce
Lamar County Chamber of Commerce
Laredo Chamber of Commerce
Longview Metro Black Chamber of Commerce
Lubbock Black Chamber of Entrepreneurs, Inc.
Lubbock Hispanic Chamber of Commerce
Lufkin/Angelina County Chamber of Commerce
McAllen Chamber of Commerce
McAllen Hispanic Chamber of Commerce
Mexican American Network of Odessa, Inc. (MANO)
Midland Black Chamber of Entrepreneurs, Inc.
Midland Hispanic Chamber of Commerce
NAACP (Austin Office)
NAACP (San Antonio Office)
National Association for the Advancement of Colored People
National Association of African American Chamber of Commerce
National Association of Women in Construction
Pampa Chamber of Commerce
Pharr Chamber of Commerce
Professional Women's Association
Rio Grande City Chamber of Commerce
Round Rock Chamber of Commerce
San Angelo Chamber of Commerce
San Antonio Hispanic Chamber of Commerce
San Antonio MBDC
San Antonio Women's Chamber of Commerce
San Marcos Hispanic Chamber of Commerce
San Saba County Chamber of Commerce
Seguin-Guadalupe County Hispanic Chamber of Commerce
Seminole Area Chamber of Commerce
Smithville Chamber of Commerce
South Texas MBDC

Texarkana Chamber of Commerce
Texas Asian Chamber of Commerce
Texas Association of African-American Chamber of Commerce
Texas Association of Mexican-American Chamber of Commerce
Texas State Conference of NAACP
Texas Tech University Small Business Development Center
Texas Workforce Center of El Paso
Tulia Chamber of Commerce
Tyler Area Chamber of Commerce
Tyler Metropolitan Chamber of Commerce
U. S. Dept of Commerce Minority Business Dev Agency
U. S. Pan Asian American Chamber of Commerce-Southwest
U. S. Small Business Administration
Victoria Hispanic Chamber of Commerce
Women's Business Council – Southwest
Women's Chamber of Commerce of Texas
Women's Enterprise
Yoakum Chamber of Commerce

Attachment D
Public Comment Notifications

The following is a list of the general circulation and minority-focused media that are contacted to post a public notice for the examination of the DBE Goal Methodology.

Abilene Reporter News
Austin American Statesman
Amarillo Globe News
Beaumont Enterprise
Brownwood Bulletin
Corpus Christi Caller Times
Childress Index
Dallas Morning News
El Paso Times
Fort Worth Star Telegram
Houston Chronicle
Laredo Morning News
Longview News Journal
Lubbock Avalanche Journal
McAllen Monitor
San Antonio Express News
African American News & Issues
La Prensa

ATTACHMENT 7

ATTACHMENT 7

Control _____

Project _____

Highway _____

County _____

DISADVANTAGED BUSINESS ENTERPRISES REQUIREMENTS

The following goal for disadvantaged business enterprises is established:

DBE
8.0%

Certification of DBE Goal Attainment

By *signing* the proposal, the Bidder certifies that the above DBE goal will be met by obtaining commitments equal to or exceeding the DBE percentage or that the Bidder will provide a good faith effort to substantiate the attempt to meet the goal.

Failure to provide commitments to meet the stated goal or provide a satisfactory good faith effort will be considered a breach of the requirements of the proposal. As a result, the bid proposal guaranty of the bidder will become property of the Department and the Bidder will be excluded for re-bidding on the project when it is re-advertised.

ATTACHMENT 8

DBE JOINT CHECK APPROVAL

CSJ: _____

Project Number: _____

Highway: _____

County: _____

To: _____ (Area/Project Engineer),

We have received the **attached request** for the use of joint check arrangements from our DBE Subcontractor _____ . This arrangement is at the DBE Subcontractor and Supplier's request and the parties involved agree that the DBE Subcontractor will place all orders to pertinent Suppliers. We further agree that the DBE Subcontractor retains all final decision-making responsibilities as stated in the Federal DBE Regulations 26.55 (c)(1).

We, as the Contractor for the project, agree to issue joint checks for payment of sums due, on the above referenced project, to pertinent Suppliers of the DBE Subcontractor. We further agree to notify you when the joint checks will be used and will provide the joint check agreement upon your request.

Contractor: _____

Signature: _____

Print Name: _____

Title: _____

Date: _____

Reserved for TxDOT Use Only		
TxDOT District Approval: ☐ Check for Approval		☐ Check for Denial
Signature:		**Reason for Denial:**
Print Name:		
Title:		
Date:		

District Procedures:

1. Provide a copy of the approval or denial for the contractor.
2. Maintain a copy for the files.
3. Conduct reviews of the Contractor and DBE procedures on the use of joint checks.

ATTACHMENT 9

ATTACHMENT 9

TEXAS
UNIFIED CERTIFICATION PROGRAM
STANDARD OPERATING PROCEDURE

I. INTRODUCTION

A Disadvantaged Business Enterprise (DBE) Unified Certification Program (UCP) has been established in the State of Texas in accordance with Title 49 Part 26 of the Code of Federal Regulations (49 CFR Part 26). Pursuant to a Memorandum of Agreement (MOA) signed by all recipients required to participate in the TUCP, the Texas Department of Transportation (TXDOT), City of Houston, City of Austin, Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), and South Central Texas Regional Certification Agency (SCTRCA) as Certifying Partners for the TUCP. The cost of creating and establishing the TUCP web site and the electronic DBE Directory will be the responsibility of TxDOT. The TUCP reserves the right to develop a methodology to ascertain maintenance and operational costs. Any changes to the web site or Directory that results in costs to the Certifying and Non-Certifying Partners will be reviewed and approved by the TUCP recipients before the changes are implemented.

Each of the Certifying Partners is required to administer a DBE certification program in accordance with 49 CFR Parts 26 and 23. As part of the TUCP, Certifying Partners will make certification decisions on behalf of all USDOT recipients, sub recipients and grantees in Texas with respect to participation in the USDOT DBE Program. Certification decisions by the TUCP shall be binding on all USDOT recipients, sub recipients and grantees within Texas.

1. The following actions have been taken by the TUCP Partners: All TUCP Partners electronically submitted the current DBE firms to the DBE Database Manager for inclusion in the TUCP DBE Directory.
2. Each DBE firm was confirmed by each TUCP Partner, that the DBE firm was certified under the provisions of 49 CFR Parts 26 and 23.
3. The TUCP Partners met to review each of the DBE firms, and concluded which TUCP Partner would have custody of the certification record.

A thorough certification process ensures that the DBE program benefits only bona fide disadvantaged businesses. In order to ensure consistent application and interpretation of the regulatory requirements for DBE certification and consistent certification determinations, a Standard Operating Procedure (SOP) will be used by all Certifying Partners.

The Standard Operating Procedure sets forth the process to be utilized by the Certifying Partners when making determinations of DBE certification eligibility.

The procedures outlined herein are consistent with the U.S. Department of Transportation regulations codified at 49 CFR Part 26.

II. DEFINITIONS

Burden of Proof
Measure of persuasion that is required to convince someone that an alleged fact is true.

DBE Certification
A finding, after a certification eligibility review by a Certifying TUCP Partner that a business meets the certification eligibility requirements and is a bona fide Disadvantaged Business Enterprise in accordance with 49 CFR Parts 26 and 23.

Certification Interview
Face-to-face meeting between the applicant firm's qualifying owner(s) for DBE certification and the Certifying Partner

Certifying TUCP Partner
A Texas State recipient of USDOT funds with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. A Certifying TUCP Partner can issue or revoke DBE certifications. This includes those entities, North Central Texas Regional Certification Agency and South Central Texas Regional Certification Agency, who are not recipients, but were formed as domestic non-profit organizations for the purposes of performing certifications on behalf of recipients.

Decertification
The removal of certification based on a determination that a currently certified DBE no longer meets the eligibility criteria and is given due process under 49 CFR Part 26.

Decision Memorandum
Written document prepared by Certifying TUCP Partner detailing certification determination rendered.

Denial of Certification
A finding that a business is not a bona fide Disadvantaged Business Enterprise. A business that has been denied DBE certification or declared ineligible cannot again reapply for DBE certification for one year from the date of denial.

Executive Committee
A group consisting of representatives from each of the TUCP Certifying Partner agencies, who shall be designated by the signatories to the Memorandum of Agreement for the Unified Certification Program.

Grantee
Any public entity that has received USDOT assistance.

Non-Certifying TUCP Partner
A State of Texas recipient, sub-recipient, or grantee with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. A Non-Certifying TUCP partner can neither issue nor revoke DBE certification.

TUCP Certifying Partner
A State of Texas federal aid recipient with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. This includes those entities, North Central Texas Regional Certification Agency and South Central Texas Regional Certification Agency, who are not recipents, but were formed as domestic non-profit organizations for the purposes of performing certifications on behalf of recipients. A Certifying Partner can issue or revoke DBE certification. The TUCP Certifying Partners are the Texas Department of Transportation (TXDOT), Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), South Central Texas Regional Certification Agency (SCTRCA), City of Austin, and the City of Houston.

TUCP Partner
All Texas State federal-aid recipients, both Certifying and Non-Certifying, participating in the TUCP.

Preponderance of Evidence
A standard of proof which is met when the evidence on a fact indicates that it is "more likely than not" true.

Recipient
Any public entity, which receives direct USDOT financial assistance.

Sub recipient
Any public entity that receives USDOT financial assistance through another recipient.

Withdrawal of Application
An applicant's written request to the Certifying TUCP Partner to cease the certification review process. An applicant that has withdrawn its application cannot again reapply for DBE certification for twelve (12) months from the date of the withdrawal.

III. CERTIFICATION PROCEDURES

A. Application for DBE Certification

1. All applicants requesting initial DBE certification must complete and submit a complete certification application package to one of the TUCP Certifying Partners. The TUCP will accept a copy of a firm's application package that was submitted to the SBA and a copy of their certification letter. SBA firms must undergo a site visit.

2. A complete package consists of the following:

   a) USDOT Uniform Certification Application and Affidavit

b) Personal Financial Statement for each qualifying socially and economically disadvantaged owner

c) Required basic and support documentation as determined by business structure and in accordance with 49 CFR Parts 26 and 23.

B. Intake

1. Immediately upon receipt of the application package it is reviewed for completeness of form. Specifically, the Affidavit of Certification and Personal Financial Statement are reviewed for original signatures and notarization, and to determine whether the basic required supporting documents have been submitted.

2. The application is reviewed to ascertain the firm's line of work and services provided. Type of business service is necessary in determining whether the Certifying Partner in receipt of the application will process the application or transfer it to another Certifying Partner.

3. Only firms organized for profit are eligible for DBE certification.

C. Desk Audit

1. The processing staff will organize and assemble the applicant information in a business file. The processing staff must be mindful that all applications are to be processed within 90 days of receipt of a complete application.

2. The processing staff will thoroughly review the application package to determine whether all required supporting documentation has been submitted, and to determine if additional information will be requested. Care should be taken to ensure that any requested documentation/information is actually pertinent to the certification review.

3. If additional information is required, the processing staff will prepare a letter to the applicant firm requesting additional information. The letter will include a due date for submission of the additional information and advise the applicant that failure to respond will administratively close the application. In establishing a due date, processing staff must allow sufficient time thirty (30) days for the applicant to provide the requested information.

4. The processing staff will monitor the timely receipt of the requested information. Upon receipt of the additional information, the processing staff will review it and make a determination as to the completeness of the certification file. Processing staff are required to obtain information from the Texas State Comptroller/Texas Secretary of State for "standing" of the applicant business and all known affiliates.

5. Familial- marital relationships (see page 9).

D. Threshold Requirements

1. The processing staff will make a determination on each of the threshold requirements.

a) **Size standard** - in making a determination of *size standard*, processing staff must reference and adhere to §26.65 and 23.33 of the regulations.

b) **Social disadvantage** - In making a determination of *social disadvantage*, processing staff must reference and adhere to § 26.63 and §26.67 of the regulations.

c) **Economic disadvantage** – in making a determination of economic disadvantage processing staff must reference and adhere to §26.67 and 23.35 of the regulations.

d) **Citizenship** - each individual qualifying the firm for DBE certification must demonstrate that he/she is a citizen of the United States or a lawfully admitted permanent resident. Each individual must submit acceptable documentation as proof of citizenship or permanent resident status.

e) **Irrevocable separation of property:** When marital assets held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest. A copy of the document legally transferring and renouncing the other spouse's rights must have been filed in the proper court. The document must clearly show receipt by the court.

2. **FAILURE TO MEET REQUIREMENT** - If the applicant firm or its qualifying owners fail to meet any one of the threshold requirements for DBE certification, the firm is to be deemed ineligible for DBE certification. The firm may appeal the denial determination to the U.S. Department of Transportation in accordance with the procedures set forth in §26.89.

3. **REVIEW OF COMPLETED FILES** - If the firm meets the threshold requirements, the processing staff will, upon a thorough and careful review of the complete file, prepare a list of firm specific questions to be answered by the qualifying owners of the firm. These questions should be in addition to the standard questions asked of every firm and should address the particulars and unique facts of the applicant firm and its owners.

a) In preparing firm specific questions, processing staff should be sufficiently knowledgeable of the business area in which the firm is

seeking certification, anticipating issues, which will require close examination. The processing staff should have knowledge of the capitalization requirements, licensing, technical expertise, staffing and industry practices. In the event that processing staff is unfamiliar with the requirements for the applicant business, technical assistance should be obtained from technical personnel within the agency.

b) Once the applicant file is complete and the questions have been prepared, processing staff must schedule a face-to-face certification on-site review meeting with the qualifying owners at a time convenient for all participants.

E. **On-Site Review**

1. The purpose of the on-site review is to verify the firm's location, personnel and operations; to substantiate information/documentation contained in the applicant file and to review business and financial records. The on-site review is the second phase of the certification review process and will also be conducted on certified firms every three years. An on-site review of the applicant firm and an interview of the socially and economically disadvantaged principals of the firm must be made in accordance with §26.83(c) (1) of the regulations.

2. The following information, **if applicable**, should be received and reviewed no later than the on-site review:

a) **Cash Receipts and Disbursements**

(i) Check for entries in the cash receipts journal, which disclose initial capital contributions.

(ii) Verify operational expenditures in the cash disbursements journal. Note questionable/exceptional/unusual entries and the frequency or consistency of such expenditures.

(iii)Note payments to and from shareholders, directors, officers and key employees in the cash disbursements journal.

(iv)Note payments to similar businesses for possible broker activity or evidence of conduit activity.

(v) Cross reference cash disbursements with cancelled checks.

(b) **Bank Statements and Cancelled Checks**

(i) Verify initial capitalization of firm with the first bank statement, if available.

(ii) Verify and document signature authority and consistency in which DBE owner v. non-DBE owner(s)/offices sign checks.

(iii)Verify payments to shareholders, key employees and consultants.

(iv)Pay particular attention to the "memo" section of checks.

(v) Determine is there are any additional checking accounts not disclosed prior to the visit. If so, note the authorized signatories.

(vi) Cross reference payments to and from clients, suppliers, consultants, etc.

(c) Payroll

(i) Determine who is on the firm's payroll.

(ii) Determine if the owner is receiving compensation in accordance with his/her ownership interest.

(iii) Determine who receives bonus payments and amounts.

(iv) Compare W-2's and 1099's to payroll register, to extent possible, for key employees.

(v) Pay attention to any "memo" notations on any payroll checks.

(d) Invoices and Receipts

(i) Check telephone bills to determine if they are addressed to the DBE firm.

(ii) Review invoices to substantiate method and source of payment.

(iii) Check invoices for suggestion of brokering activity or reliance on non-DBE firms.

(iv) Examine invoices for resolution of regular dealer issues (freight charges).

(e) **Contract Files**

(i) Determine who executes contracts on behalf of the firm.

(ii) Verify the services provided by the applicant firm and the terms and conditions of the provision of their services.

(iii) Verify consistency in which firm does business with a particular firm and whether any issues of dependency.

(f) **Inventory and Equipment**

(i) Identify nature and use of equipment possessed by firm.

(ii) Verify ownership of equipment with invoices.

(iii) If equipment is leased, review equipment lease agreements.

(iv) Identify inventory maintained by firm.

(v) Determine whether lack of inventory suggests broker or conduit activity.

(vi) If regular dealer, verify inventory, warehouse facility, transportation equipment, etc.

(vii) Determine if firm's name on vehicles (trucks).

(g) **Bonding and Insurance**

(i) Determine who is guaranteeing/financing bonding.

(ii) Is bond commensurate with size of firm?

(iii) Are insurance documents in the name of the firm?

(iv) Verify types of insurance maintained by firm.

(v) Does firm carry Key Man Insurance (life insurance on key person in business, should be owner—business is beneficiary)? If so, for whom?

(h) **Corporate Kit or Business Organization Documents**

(i) Cross reference documents in corporate kit with original submission.
(ii) Review all minutes and entries for voting, control, attendance, etc.

(i) **Corporate Kit or Business Organization Documents**
(i) Review stock transfer ledger.
(ii) Review cancelled/voided stock certificates and note reasons for cancellations.
(iii) Review non-issued stock certificates to determine if there is numerical continuity.
(iv) Verify corporate seal.
(v) Review by-laws for revisions since original submission of documents

(j) **Employment Agreements**
(i) Determine the existence of any Employment Agreements for owner(s) or key personnel.
(ii) Review terms of Employment Agreements for possible conflict with qualifying owner's ability to control operations of firm.

(k) **Physical Characteristics of Office/Building Location**
(i) Determine if the firm has identifying signs outside or inside of the building/office.
(ii) Determine if DBE owner has own office.
(iii) Request a tour of facilities and observe equipment on premises.
(iv) Ask questions regarding operation of equipment.
(v) Determine if office space shared with other companies, and if so, the nature of the business of the other companies.
(vi) Determine if equipment, supplies, etc. is shared with other companies.
(vii) If shared facilities, equipment, verify arrangement for sharing.
(viii) Determine if owner(s) are operating other related or unrelated businesses from the location. If so, identify the business and its owners.

(l) **Familial-martial relationships-** Familial-martial relationships between owners and employees that is pertinent to ownership and control of the company.

3. Information obtained during the on-site review must be compiled in a separate comprehensive written report. The on-site review report is made a part of the certification file and incorporated accordingly.

4. Depending upon the location of the firm, a Certifying Partner may request another Certifying Partner to conduct the on-site review. In such instances, a written request must be made to the Certifying Partner conducting the review with issues of concern identified. The Certifying Partner conducting the on-site review will be responsible for preparing the on-site review report.

5. An on-site visit to the job-site must be conducted if at the time of the on-site, the applicant firm is working.

6. In lieu of conducting an on-site review for a firm outside of Texas, a Certifying Partner may utilize an on-site review report from the potential DBE's home state DOT that certified the firm in accordance with 49 CFR Parts 26 and 23.

7. An applicant's failure to permit an on-site review shall be grounds for denial of DBE certification for failure to cooperate. The firm will be denied certification and cannot reapply for 12 months. The firm may appeal the denial determination to U.S. DOT in accordance with the procedures set forth in §26.89.

F. Certification Determination and Recommendation

1. **DECISION MEMORANDUM** - The certification recommendation is the final product of all information, which has been reviewed, and is an evaluation of the firm's compliance with the certification eligibility standards set forth in the regulations. The written recommendation must be sufficiently comprehensive to persuade an objective party of the merits of the recommendation.

2. **MANAGEMENT REVIEW** - The certification recommendation must be submitted to the supervisor responsible for certification review. The complete file must accompany the submission of the certification recommendation. The supervisor responsible for the certification review must provide written concurrence with the recommendation for certification or denial of certification before a letter can be forwarded to the firm's owners.

G. DBE Certification and Annual Certification Renewal

1. **WRITTEN NOTIFICATION** - A firm will be notified in writing by the TUCP Certifying Partner that it has been granted DBE certification.

2. **LENGTH OF CERTIFICATION** - Once a firm is certified as a DBE by the TUCP, it shall remain certified, unless and until its certification has been removed in accordance with procedures set forth in 49 CFR §26.87.

3. **CHANGE OF CIRCUMSTANCE** - A certified DBE firm has an affirmative responsibility to notify the TUCP Certifying Partner in writing, of any change in circumstances affecting size, disadvantaged status, ownership, or control requirements of the regulation, or any material change in the information provided in its application for DBE certification. Such notice must be within thirty (30) days of the change-taking place.

4. **NO CHANGE AFFIDAVIT** - A certified DBE firm must submit annually, on the anniversary of DBE certification, a No Change Affidavit. A

No Change Affidavit is a sworn affidavit affirming that there have been no changes in the firm's circumstances affecting its size, disadvantaged status, ownership or the control requirements of the regulation, or any material change in the information provided in its application for DBE certification, including the support documentation.

a) Each firm will be notified by the TUCP Certifying Partner at least 30 days in advance of its anniversary date, of the annual submission requirement and will be provided with the necessary affidavits to complete and return.

b) A firm failing to comply with the annual submission requirement will be notified in writing 30 days from the date that the submission was due, of the TUCP's intent to decertify the DBE in accordance with §26.87 of the regulation.

c) A firm failing to comply with the annual submission requirement will be decertified under the procedures of §26.87.

H. Initial Denial of DBE Certification

1. A firm will be notified in writing by the Certifying Partner that it has been denied DBE certification by the TUCP.

2. The firm will be provided with a written explanation of the reasons for denial, specifically referencing the evidence in the record that supports each reason for the denial.

3. All documents and information used to render a determination of denial will be made available for inspection by the applicant, upon written request to the Certifying Partner.

4. A firm that is denied DBE certification may not again apply for certification with the TUCP for a period of one year.

5. A firm denied DBE certification may appeal the denial of DBE certification to the USDOT in accordance with §26.89 of the regulation.

I. Removal of DBE Eligibility (Decertification)

1. The TUCP Certifying Partners will follow procedures consistent with §26.87 when removing DBE certification eligibility.

2. A DBE firm whose eligibility has been removed (decertified) for any of the following reasons will be afforded an Appeal Process as stated in Section J(2):

a) The business has changed to the extent that it is no longer owned or controlled by socially and economically disadvantaged individual(s).

b) The DBE firm is no longer an ongoing business entity.

c) The socially and economically disadvantaged owners falsified a sworn statement. This action may also result in more punitive action such as debarment.

d) The DBE fails to notify the TUCP Certifying Partner, within 30 days, of changes in ownership, control, independence or status as an ongoing concern.

e) A determination by the TUCP Certifying Partner that the firm no longer meets certification eligibility standards.

f) The DBE exhibits a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirement of the regulations. This action may also result in more punitive action such as debarment.

3. Decertified firms shall be removed from the TUCP directory..

4. A decertified firm may not again apply for certification with the TUCP for a period of one year.

J. Appeal Process

1. Initial Denials

a) a firm denied DBE certification may appeal the denial of DBE certification to the United States Department of Transportation (USDOT) in accordance with §26.89 of the regulation. Such appeal must be filed within 90 days of the date of the determination letter.

b) Pending a determination by USDOT, the decision rendered by the Certifying Partner remains in effect for the TUCP. Upon notification by USDOT, the TUCP Certifying Partner will forward a copy of the complete administrative record for review.

c) All appeal decisions rendered by USDOT are administratively final and are not subject to petitions for reconsideration.

d) A firm that is denied DBE certification may not again apply for certification with the TUCP for a period of one year.

e) The Database Manager will receive written notification of the certification determination rendered by the TUCP Certifying Partner.

2. **Removal of Certification**

a) Any firm that was certified under 49 CFR Part 26 and has had their certification removed may file a written rebuttal or appear in person at an informal hearing.

b) All requests for an informal hearing must be filed with the TUCP Certifying Partner responsible for the removal of DBE certification. The firm will have the opportunity to present information in person or in writing.

c) The TUCP Certifying Partner must maintain a complete record of the hearing, by a means acceptable under State law for the retention of a verbatim record of an Administrative Hearing.

d) Separations of Functions: The TUCP Certifying Partner must ensure that the decision in a proceeding to remove a firm's eligibility (decertification) 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.

e) Any firm may appeal directly to the United States Department of Transportation (USDOT). Such appeal must be filed within 90 days of the date of the denial letter from the Certifying Partner.

f) Pending a determination by the USDOT, the decision rendered by the TUCP Certifying Partner remains in effect for the TUCP.

g) Upon notification by USDOT, the TUCP Certifying Partner will forward a copy of the complete administrative record for review. USDOT will make a determination based solely on the administrative record.

h) USDOT will provide written notice of its decision to the TUCP and the appellant.

i) It is the policy of USDOT to make its determination within 180 days of receiving the complete administrative record. If a determination is not made within this period, USDOT will provide written notice to the parties explaining the reason for the delay and a date by which the appeal decision will be made.

j) All appeal decisions rendered by the USDOT are administratively final and are not subject to petitions for reconsideration.

K. Third Party Challenge

1. In compliance with Section 26.87 the TUCP Certifying Partners shall accept written complaints from any person, including Non-Certifying Partners, USDOT, and or a TUCP Certifying Partner alleging that a currently certified DBE firm is ineligible.

2. The complainant must state the specific reasons for the challenge and submit documentation in support of the complaint. The complainant's identity shall be protected as provided for in §26.109 (b).

3. The challenged firm shall be notified, in writing, by the original TUCP Certifying Partner, of the challenge, the basis for the challenge and the relevant regulations.

4. The TUCP Certifying Partner responsible for the original certification shall thoroughly investigate the complaint within a reasonable time not to exceed 60 days.

5. The TUCP Certifying Partner shall notify the challenged firm in writing via certified mail of the preliminary findings of the complaint.

~~6.~~ If reasonable cause to remove DBE certification eligibility is found, the original Certifying Partner will notify the complainant and DBE firm of the specific grounds for removal and will inform the DBE firm of its right to an informal hearing to address the preliminary findings.

7. The challenged firm may request reconsideration in writing, of the intent to remove certification eligibility, within 15 days of the date of the notice.

8. The request for an informal hearing must be made to the investigating TUCP Certifying Partner and must indicate whether the firm wishes to file a written appeal or appear in person for a hearing.

9. USDOT may also notify the TUCP of reasonable cause to find a certified DBE firm to be ineligible. In such cases, the TUCP shall without delay begin a proceeding to determine whether the firm's eligibility should be removed, as provided in Section 26.87.

III. AGENCY COMPLIANCE

If any TUCP Certifying Partner has reason to believe that another TUCP Certifying Partner is not in compliance with the requirements of 49 CFR 26, Subpart E, they should bring the matter to the attention of the TUCP Executive Committee. The TUCP Executive Committee will be responsible for reviewing any compliance matters that pertain to the requirements of 49 CFR Part 26 Subpart E. If the TUCP Certifying Partner raising a compliance matter is not satisfied with the action taken by the TUCP Executive

Committee to resolve the matter, they may make a written complaint to the appropriate U.S. DOT Intermodal Agency, e.g., FTA, FAA, FHWA etc.

ATTACHMENT 10

ATTACHMENT 10

TEXAS

MEMORANDUM OF AGREEMENT

for a

DISADVANTAGED BUSINESS UNIFIED CERTIFICATION PROGRAM

U.S. DEPARTMENT OF TRANSPORTATION PARTNERS

♦

Texas Department of Transportation
City of Houston
City of Austin
Corpus Christi Regional Transportation Agency
North Central Texas Regional Certification Agency
South Central Texas Regional Certification Agency

Texas Unified Certification Program
Memorandum of Agreement and Standard Operating Procedures
Amendment One

From: R.D. Brown, Interim Director, Certification and Reporting
Office of Civil Rights, TxDOT

Effective Date: October 14, 2008

Purpose

The purpose is to revise Section II and Section III of the Texas Unified Certification Program Standard Operating Procedures

Changes:

Under Section II. Definitions – Withdrawal of Application - An applicant's written request to the Certifying TUCP Partner to cease the certification review process. An applicant that has withdrawn its application cannot again reapply for DBE certification for twelve (12) months from the date of the withdrawal changed to:

An applicant's written request to the Certifying TUCP Partner to cease the certification review process. A new applicant that has withdrawn its application, prior submitting a complete DBE application (Desk Audit Checklist) and prior to an On-site Eligibility Review, cannot again reapply for DBE certification for six (6) months from the date of the withdrawal.

Any application withdrawn after an On-site Eligibility Review is conducted must wait for a period of one year (12 months) from the date of withdrawal, to reapply.

Under Section III. H. 4. - A firm that is denied DBE certification may not again apply for certification with the TUCP for a period of one year changed to:

A firm decertified for cause may not apply again for DBE certification with the TUCP for a period of one year (12 months). A firm that is decertified for not submitting an Annual Affidavit (failure to cooperate clause) may reapply for DBE certification after a six (6) month waiting period from the date of decertification.

SIGNATURES AND ACKNOWLEDGEMENT OF CERTIFYING ENTITIES ON FOLLOWING PAGE

Texas Department of Transportation — Date: 4/3/09

North Central Texas Regional Certification — Date: 4/3/09

South Central Texas Regional Certification — Date: 4/3/09

City of Austin — Date: 4/3/09

Corpus Christi Regional Transportation Authority — Date: 4.3.09

City of Houston — Date: 4/3/09

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APPENDIX A 10

STATE OF TEXAS
MEMORANDUM OF AGREEMENT

UNIFIED CERTIFICATION PROGRAM

This Memorandum of Agreement (MOA) establishes a Disadvantaged Business Enterprise (DBE) Unified Certification Program (UCP) in the State of Texas in accordance with Title 49 Parts 26 and 23 of the Code of Federal Regulations (49 CFR Parts 26 and 23). The TUCP Certifying Partners are the Texas Department of Transportation (TxDOT), City of Houston, City of Austin, Corpus Christi Regional Transportation Authority (CCRTA), North Central Texas Regional Certification Agency (NCTRCA), and South Central Texas Regional Certification Agency (SCTRCA).

Introduction

Each Certifying Partner in Texas is required to administer a DBE Certification Program in accordance with 49 CFR Part 26, Part 26.81 of this regulation require each state to develop a UCP by March 4, 2002. Each TUCP Certifying Partner agrees to commit sufficient resources and expertise to carry out the requirements of 49 CFR Part 26.

Organization

The TUCP shall establish an Executive Committee consisting of representatives from each of the Certifying Partner agencies, who shall be designated by the signatories to this MOA Agreement. The Executive committee will also be responsible for resolving any conflicts between certification actions of its members. The Standard Operating Procedures of the TUCP Section III-Agency Compliance, outlines the process for dealing with matters regarding the compliance with certification requirements. Nothing in this agreement should be construed to contravene the sovereignty of each participant. The contact person for the TUCP is the Texas Department of Transportation, Business Opportunity Program Section.

A Certifying TUCP Partner may terminate its responsibilities under this Agreement and become a Non-Certifying TUCP Partner upon a six month notice to all TUCP Partners.

Purpose

The objectives of the Texas UCP are as follows:

- To follow the certification procedures and standards and the non-discrimination requirements of 49 CFR Parts 26 and 23.

- To cooperate fully with all oversight, review and monitoring activities of the United States Department of Transportation (USDOT) and its operating administrations.

- To implement USDOT directives and guidance on DBE certification matters.

- To make all certification and decertification decisions on behalf of all TUCP Partners with respect to participation in the USDOT DBE Program. Certification decisions by the TUCP shall be binding on all TUCP Partners. Certification decisions must be made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

- To provide a single DBE certification that will be honored by all TUCP Partners.

- To maintain a unified DBE directory containing at least the following information for each firm listed: address, phone number and approved NAICS codes. The TUCP shall make the directory available to the public electronically on the Internet as well as in print. TxDOT shall update the electronic version of the directory by including additions, deletions and other changes upon notification by the DBE and/or Certifying Partner.

- The TUCP Partners will commit adequate resources and expertise to carry out this agreement. The partners will continue to individually bear the costs of training staff, certifying firms and sharing DBE files, i.e. postage and copying costs. Travel to and from meetings will be the responsibility of individual partners.

The TUCP will be created and fully functional no later than 18 months from the date of approval by the Secretary of Transportation and in accordance with the Implementation Schedule as described herein.

Definitions

TUCP Certifying Partner

A State of Texas recipient with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. This includes those entities, North Central Texas Regional Certification Agency and South Central Texas Regional Certification Agency, who are not recipents, but were formed as domestic non-profit organizations for the purposes of performing certifications on behalf of recipients. A certifying partner can issue or revoke DBE certification.

TUCP Partner

All Texas State recipients participating in this Memorandum of Agreement, both Certifying and Non-certifying Partners.

Non-Certifying TUCP Partner

A State of Texas recipient, sub-recipient or grantee with a current DBE Program Plan approved by an appropriate USDOT oversight modal agency. A Non-Certifying Partner can neither issue nor revoke DBE certification.

Recipient

Any public entity which receives direct USDOT financial assistance.

Sub-recipient

Any public entity receiving USDOT financial assistance through another recipient.

Grantee

Any public entity that has received USDOT assistance.

TUCP PROGRAM DESCRIPTION

Partners' Roles, Responsibilities & Obligations

All TUCP Partners agree to maintain DBE certification application files, conduct site visits, make certification decisions and handle appeals and complaints. The Certifying TUCP Partners agree to utilize the USDOT Uniform Certification Application and Affidavit.

- All decisions related to eligibility and certification must agree with 49 CFR Parts 26 and 23.

- The TUCP Certifying Partners and Non-Certifying Partners must have an approved DBE Program. Additionally, each Certifying Partner must have clearly defined and written processes and procedures related to the administration of its DBE Program and certification decisions.

- Each TUCP Certifying Partner must adhere to the processes and procedures as set forth in the Standard Operating Procedures.

DBE Directory Management :

Upon approval of a firm for DBE certification by the UCP Certifying Partners, the originating Certifying Partner shall submit the firm's information for inclusion in the electronic database directly to the DBE Database Manager. This information shall include at a minimum:

- Name, Street Address, P.O. Box, City, County, State, Telephone and Fax Number, E-mail address and Federal Tax Identification Number/SSN;

- Name, Sex, Ethnicity, Race and Country of Origin of qualifying DBE owner(s);

- Type of work performed by the DBE using the North American Industry Classification System (NAICS) adopted by the SBA on October 1, 2000, as amended;

- Date Business was Established;

- Name of TUCP Certifying Partner;

- Certification and Annual Update Affidavit Dates;

The TUCP Certifying Partners agree that a UCP Database Manager will be designated. The DBE Database Manager shall assume the following responsibilities:

- Input all data and make any corrections, additions and/or deletions upon receipt of information from the Certifying TUCP Partners;

- Maintain and keep the electronic DBE database current;

- Make the electronic DBE database available to all TUCP Partners and other interested parties;

- Provide printed copies only of the list of firms that are DBE certified upon request and at a charge to be established; (Third parties should only be provided with a list of DBE certified firms. They should not be provided with information that a firm has been denied certification.)

- Maintain the TUCP Website.

DBE Directory & Internet Access

The DBE Directory will be located on the TUCP website. In accordance with 49 CFR Part 26.31 and 23.31(b), the DBE Directory will include the following minimum information for each firm:

- Name, address and telephone number of firm;

- Contact person

- Types of work performed by the firm with appropriate six (3) digit NAICS code and description.

The TUCP DBE Directory may contain additional information, including but not limited to the following:

- Geographic Location of the Firm (i.e., county)
- Website Address of the Firm
- Fax Number & E-Mail Address of the Firm
- Certification and Annual Update Affidavit Dates

TUCP PROGRAM COSTS AND FUNDING

The cost of creating and establishing the TUCP website and the electronic DBE Directory will be the responsibility of the Texas Department of Transportation.

Training and Resources

The TUCP Certifying Partners will conduct ongoing in-service training. The TUCP Certifying Partners will agree to rotate the duties of planning and conducting training sessions.

CERTIFICATION PROCEDURES AND PROCESS

In addition to the following procedures, the TUCP will follow all certification procedures and standards of 49 CFR Part 26, and will implement USDOT directives and guidance concerning DBE certification matters. A Standard Operating Procedure (SOP) has been developed and will be utilized by all Certifying TUCP Partners. They may be modified as needed and agreed upon by the Certifying TUCP Partners and approved by U.S. DOT.

- The TUCP will accept an application from the SBA, but will not automatically recognize the DBE certification of a firm certified by the Small Business Administration . (See attached SOP for process)
- The TUCP will utilize the USDOT approved Uniform Certification Application and other related certification documents to facilitate "one-stop shopping" for applicants.

Geographic & Industry Considerations

Six agencies have agreed to perform the certification process for DBE program applicants within the State of Texas by geographical location. If a DBE applicant/firm works only in the highway construction industry, TxDOT agrees to process the

application and/or have certification responsibility for the DBE firm. Therefore, the certifying TUCP partner to whom application is made will ascertain the geographical area of the applicant firm and/or its primary work type or industry, and take the appropriate action to either process the application or forward the application within three to five business days to the appropriate TUCP certifying partner.

City of Houston: Georgraphical: Counties of Brazoria, Chambers, Fort Bend, Galveston, Harris, Liberty, Montgomery, and Waller.

Corpus Christi Regional Transportation Authority: Geographical: Counties of Aransas, Bee, Goliad, Jim Wells, Karnes, Kleberg, Live Oak, Nueces, Refugio, and San Patricio

North Central Texas Regional Certification Agency: Geographical: Counties of Collin, Dallas, Denton, Ellis, Erath, Hood, Jack, Johnson, Kaufman, Navarro, Palo Pinto, Parker, Rockwall, Somervell, Tarrant, and Wise.

South Central Texas Regional Certification Agency: Geographical: Counties of Atascosa, Bandera, Bexar, Comal, Frio, Guadalupe, Kendall, Kerr, McMullen, Medina, Uvalde, Wilson, Bastrop, Caldwell, Hays, Travis, and Williamson.

Texas Department of Transportation: Geographical: All other remaining counties in Texas.

Quality Assurance (New Certifications)

The SOP has been created to ensure consistent application of UCP program requirements among the Certifying TUCP Partners. Uniform documents have been developed for use by the Certifying TUCP Partners so that consistent information is obtained and used in certification determinations. At a minimum, there will be annual training of certification staff in order to maintain consistency in determinations.

Annual Review Process

DBEs will update their certifications annually using the TUCP Annual Update "No Change" Affidavit as required in the SOP. Failure to submit the required documentation may result in certification removal as outlined in 49 CFR Part 26.87 and the SOP. The annual review will be conducted by the responsible certifying TUCP Partner. A DBE on-site review will be conducted by the TUCP Partner every three years in conjunction with the DBE firm's submittal of the Annual Update Affidavit per 49 CFR Part 26.83(h).

Third-Party Challenges

Provisions exist in the Standard Operating Procedure for the Certifying TUCP Partners to accept written complaints from a third party alleging the ineligibility of a currently certified firm.

Appeals Process and Procedures

An appeals procedure has been established as part of the TX SOP for appeals of denial of original certification, and decertification that provides due process to the affected firm in accordance with 49 CFR Part 26.

Denials of Original Certifications and Decertification: The DBE applicant has the opportunity to appeal to U.S. DOT in accordance with 49 CFR Part 26.89. Firms that are decertified will have due process in accordance with 49 CFR Part 26.87.

IMPLEMENTATION SCHEDULE

The Certifying TUCP Partners will inform the public about the TUCP by holding public meetings throughout the State immediately upon approval by the USDOT of this MOA Agreement. Notification of the public meetings as well as the TUCP will occur in a variety of ways, including but not limited to the following: press releases, a notice on the Certifying TUCP Partners' website, and direct mailings to individual DBE firms, professional associations and community based organizations.

This MOA was submitted to the non-Certifying TUCP Partners, USDOT modal agencies and the Certifying TUCP Partners' respective counsels for their review and comment. Changes and revisions were made based on the comments received. The MOA was then re-submitted to all TUCP Partners for signature.

The following actions will be taken and completed by the Certifying Partners or designees no later than 18 months from the date of USDOT approval of this MOA Agreement:

Staff Training

- Develop and finalize training modules for SOP Manual, eligibility criteria, forms and procedures, on-site review, personal net worth analysis, internet-based system (DBE on-line directory).
- Recruit instructors and determine locations for training workshops.
- Schedule Joint Training Sessions.
- Conduct Initial Training.

Unified DBE Directory

- Develop and complete parameters for Unified DBE Directory.
- Compare UCP Certifying Partners databases.
- Remove duplicate DBE firms.
- Develop common database.
- Develop procedures for electronic submission of DBE firms for inclusion in the Unified DBE Directory.
- Develop and issue press release on public access to online DBE Directory (information will be maintained on TXDOT Website).

Transition of Currently Certified DBEs

The following actions have been accomplished by the TUCP Partners:(1) Each TUCP Partner has ensured each DBE has been certified under 49 CFR Parts 26 and 23; (2) TUCP Partners have reviewed the DBE firms and determined which TUCP Partner will have responsibility for the DBE firm's continued participation in the DBE program in accordance with 49 CFR Parts 26 and 23, based upon the geographical location of the DBE's home office; (3) Each TUCP Partner has forwarded to the designated TUCP Partner, the DBE certification file for which it has assumed responsibility based upon the geographical location of the DBE's home office.

CHANGES TO THE MOA

Changes to this MOA Agreement shall require the approval of the TUCP Certifying Partners and U.S. DOT.

SUMMARY

As a result of the requirements set forth in 49 CFR Parts 26 and 23, we the undersigned, agree to participate in the STATE OF TEXAS'S Unified Certification Program in accordance with the provisions of this MOA and agree to abide by its contents

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

Jeffrey W. Travillion, Sr. 05/19/2005

Name Date

DIRECTOR

Title

CITY OF AUSTIN

Agency

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

Name _____ Date 19 May 2005

EXECUTIVE DIRECTOR
Title

SCTRCA
Agency

NCTRCA

North Central Texas Regional Certification Agency

AND

RECEIVED
CONSTRUCTION DIVISION
2005 MAY 25 AM 10: 42

Texas Unified Certification Program
TUCP

Memorandum of Agreement Signature Page Executed and Delivered
by the
NCTRCA a TUCP Certifying Partner

John Kelly

John Kelly, Director
"jkelly@nctrca.org"

20, May 2005
Date

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

Name _____ Date 5/20/10

Director
Title

City of Houston
Agency

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNERS

Name- [signature] Date- June 1, 2005

Title- Director

Agency- Texas Department of Transportation

EXECUTED AND DELIVERED by and between the TUCP Partners as of the effective date of this MOA.

TUCP CERTIFYING PARTNER

Lamont C. Taylor
DBE/EEO Officer
Regional Transportation Authority

6.05
Date

ATTACHMENT 11

Search TxDOT

E-Mail Us
Districts, Divisions, Offices

TxDOT Library

Forms
Most Requested Forms
Aviation
Adopt-an-Airport
Auto Theft Prevention
Careers
Civil Rights
Complaints
Consultants & Contractors
Crash Records
Doing Business
Drivers & Vehicles
Financial Responsibility
Household Goods Movers
Lemon Law
License and Specialty Plates
Motor Carriers
Motor Vehicle Dealers
Outdoor Advertising
Public Transportation
Rail and Rail Safety
Register Your Vehicle
Tax Assessor-Collectors
Title Your Vehicle

Publications
Audio/Video
Maps
More Information

Page Options
E-Mail Page
Printer-Friendly
Enlarge Font
Reduce Font

Disadvantaged Business Enterprises Forms

You may download the software (Tools and Plug-Ins) needed to access forms or view frequently asked questions regarding forms (Online Forms FAQs).

No.	Title	Format
2099	TUCP DBE Uniform Certification Application	
2103	TUCP DBE Annual Update Affidavit	
2177	Prompt Payment Certification (Federal-Aid Projects)	
2178	DBE Joint Check Approval	
2182	Commercially Useful Function (CUF) Project Site Review	
2184	Prime Contractor : DBE Good Faith Effort	
2228	DBE Substitution Request	
2307	DBE Needs Assessment	
SMS.4901	DBE Commitment Agreement	
SMS.4901-MS	DBE Program Material and Supplier Commitment Agreement	
SMS.4901-T	DBE Trucking Commitment Agreement	
SMS.4902	DBE Prime Contractor Payments to Non-DBE Subcontractors	
SMS.4903	DBE Monthly Progress Report	
SMS.4904	DBE Final Report	

More Information

Back

- Disadvantaged Business Enterprise (DBE) Program

125 East 11th Street Austin, Texas 78701
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EXHIBIT I

49 CFR Part 26



FEDERAL REGISTER

Vol. 79 Thursday,
No. 191 October 2, 2014

Part II

Department of Transportation

Office of the Secretary

49 CFR Part 26

Disadvantaged Business Enterprise: Program Implementation Modifications; Final Rule

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR Part 26

[Docket No. OST–2012–0147]

RIN 2105–AE08

Disadvantaged Business Enterprise: Program Implementation Modifications

AGENCY: Office of the Secretary (OST), U.S. Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: The U.S. Department of Transportation (DOT or Department) is amending its disadvantaged business enterprise (DBE) program regulations to improve program implementation in three major areas or categories. First, the rule revises the uniform certification application and reporting forms, creates a uniform personal net worth form, and collects data required by the Moving Ahead for Progress in the 21st Century Act (MAP–21), on the percentage of DBEs in each State. Second, the rule strengthens the certification-related program provisions, which includes adding a new provision authorizing summary suspensions under specified circumstances. Third, the rule modifies several other program provisions concerning such subjects as: Overall goal setting, good faith efforts, transit vehicle manufacturers, and counting for trucking companies. The revision also makes minor corrections to the rule.

DATES: This rule is effective November 3, 2014.

FOR FURTHER INFORMATION CONTACT: For questions related to this final rule or general information about the DBE rules/regulations, please contact Jo Anne Robinson, Senior Attorney, Office of General Law, Office of the General Counsel, U.S. Department of Transportation, 1200 New Jersey Avenue SE., Washington, DC 20590, Room W94–205, 202–366–6984, *JoAnne.Robinson@dot.gov.* DBE program points of contact for information related to other aspects of the DBE program, including certification appeals, programs to assist small and disadvantaged businesses, and information on the DBE program in specific operating administrations, can be found at *https://www.civilrights.dot.gov/disadvantaged-business-enterprise/about-dbe-program/dbe-program-points-contact.*

SUPPLEMENTARY INFORMATION: On September 6, 2012, the Department published in the **Federal Register** (77 FR 54952) a notice of proposed rulemaking (NPRM) to improve implementation of the DBE program. The DBE program is designed to enable small businesses owned and controlled by socially and economically disadvantaged individuals to compete for federally-funded contracts let by State and local transportation agencies the receive funds from DOT (i.e., recipients). The proposed rule called for a 60-day comment period, with comments to be received by November 5, 2012. Subsequently, the comment period was extended to December 24, 2012, through a notice published October 25, 2012 (77 FR 65164). The Department received approximately 300 comments from State departments of transportation, transit authorities, airports, DBEs, non-DBE firms, and representatives of various stakeholder organizations. Several commenters suggested that the Department hold a public meeting or listening session on the proposed changes before issuing a final rule. The Department responded by scheduling a public listening session for October 9, 2013, as announced in a September 18, 2013 notice (78 FR 57336), to receive additional public input on the costs and benefits of certain proposed changes, among other things. The public comment period also was reopened and extended from the date of publication until October 30, 2013. However, due to the lapse in government funding on October 1, 2013, the October 9, 2013 listening session was canceled and rescheduled to December 5, 2013 (78 FR 68016; November 13, 2013). The public comment period was reopened and extended to December 26, 2013.

The Department received an additional 50 written comments during the reopened comment periods and received in-person oral testimony from 23 individuals at the listening session, which was held in Washington, DC. Over 500 individuals registered to participate in the listening session via Web conferencing made available by the Department. A transcript of the comments received at the listening session and through the Web conferencing was placed in the NPRM docket before it closed on December 26, 2013.

Many of the written comments the Department received were extensive and covered numerous proposed changes, as well as commentary on existing regulations that are not the subject of a proposed amendment. Commenters also suggested changes beyond the scope of what was proposed by the Department in the NPRM. The Department has made changes in this final rule to some of its proposals in response to comments received during the entire comment period and at the listening session. With the exception of comments that are beyond the scope of the proposed rulemaking, or that failed to set forth any rationale or make suggestions, the Department discusses and responds to the comments on the major issues in the NPRM below.

Personal Net Worth (PNW) Form and Related Requirements

PNW Form

The Department explained in the NPRM the reasons it believed creating a uniform personal net worth (PNW) form would clear the confusion that may exist when recipients or other entities that perform the certification function (i.e., certifying agencies) use the U.S. Small Business Administration's (SBA) Personal Financial Statement Form 413 as part of their evaluation of the economic disadvantage of an applicant for certification pursuant to the rule. For example, the SBA Form 413 requires each partner or stockholder with 20% ownership or more of voting stock to complete the form. This is not required by 49 CFR part 26 and has caused some confusion. We proposed a revision to 49 CFR 26.67 and offered a sample PNW form and accompanying instruction sheet (see the proposed Appendix G of the September 6, 2012, proposed rule). The Department proposed that a standard form be used by all applicants to the program. Recipients were encouraged to post the new form electronically in a screen-fillable format on their Web site to allow users to complete and print the form online.

The proposed PNW form differed in several respects from the SBA's form that the Department mentioned in its June 2003 revision to Part 26 as an appropriate form for use by our recipients in determining whether an applicant meets the economic disadvantage requirements. Most notably, the form's length increased when more columns and rows were added to give applicants space to fill in their answers. We also proposed that persons completing the form submit backup documentation such as current bank, brokerage, and retirement account statements, mortgage notes, and instruments of conveyance and encouraged recipients when reasonable questions or concerns arise to look behind the statement and the submissions. A related proposal involved requiring applicants to submit documentation for items excluded from the PNW calculation, such as net equity in the primary residence and the value

of the disadvantaged owner's interest in the applicant firm.

The Department invited comment on whether the spouse of an applicant owner should have to file a PNW statement even if the spouse is not involved in the business in question. We noted that the SBA requires the submission of a separate form from a non-applicant spouse if the applicant is not legally separated. However, the SBA requirement is linked to the agency's consideration of a spouse's financial situation in determining a person's access to credit and capital; the existing DOT rule does not take this into account except in cases involving individual determinations of social and economic disadvantage (e.g., Appendix E situations). Currently, certifiers are able to request relevant information on a case-by-case basis. The NPRM proposed adding language to 49 CFR 26.67 to recognize the authority of certifiers to request information concerning the assets of the disadvantaged owner's spouse where needed to clarify whether assets have been transferred to the spouse.

On a related subject, the Department asked for comment on whether the treatment of assets held by married couples should extend to couples who are part of domestic partnerships or civil unions where these relationships are formally recognized under State law.

Over 60 comments addressed issues related to the PNW form, a significant majority of which supported the idea of a DOT-developed PNW form, although some did advocate for the continued use of SBA Form 413. One commenter suggested that the Department mandate that the new form be used without modification and that regulatory provisions be added to address violations by Unified Certification Program (UCP) certifying agencies that revise the form. There were many comments regarding the propriety of including in the PNW form assets that are excluded from the calculation used to determine economic disadvantage under the terms of the existing regulations at 49 CFR 26.67(a). While the majority of the commenters supported creating a DOT form, many thought the proposed form was too burdensome, requested too much documentation, is complicated, and should not be used for those reasons. Similarly, other commenters objected to the form's length, with some likening it to a Federal income tax filing. Some commenters requested information on the methodology used to estimate the paperwork burden associated with completing the proposed DOT PNW form.

Commenters that addressed the question of requiring the spouse of an applicant who is not involved in operating the business to submit a PNW form included business owners, UCP recipients, and advocacy group representatives. Ten commenters favored such a requirement, citing the need to review the applicant's claim that his or her PNW statement accurately reflects community property interests and as a check on the transfer of assets as a means to circumvent the eligibility requirements. Twenty commenters opposed requiring a spousal PNW statement, citing paperwork burden concerns and pointing out that the existing regulation enables certifiers to obtain this information on a ''case-by-case'' basis. Many commenters believed the requirement would be intrusive and unwarranted and would complicate an already burdensome application. A commenter stated that a blanket requirement would be counter-productive and dissuade eligible DBE owners from participating in the program. However, the majority of commenters favored the collection of a PNW statement from a spouse if he or she has some role in the business (e.g., stockholder, corporate director, partner, officer, of key person), has funded or provided financial guarantees, or has transferred or sold the business to the applicant.

All of the commenters that responded to the Department's question of extending the treatment of assets of married couples to domestic partnerships or civil unions recognized under State law supported such an extension as a matter of fairness and equal treatment. Among the commenters was a coalition of nine organizations led by the National Gay & Lesbian Chamber of Commerce, a national not-for-profit advocacy organization dedicated to expanding the economic opportunities and advancements of lesbian, gay, bisexual and transgender-owned businesses across the country.

DOT Response: The Department has decided to finalize its own PNW form largely as proposed, but with certain changes in response to comments that argued that the proposed form was unnecessarily burdensome. We believe a more prudent approach than the proposal to require all persons to submit backup documentation in every instance (including items excluded under the regulations) is for recipients to request this information for any assets or liabilities noted on the PNW form on a case-by-case basis rather than mandatory submission by all applicants. A one-size fits all approach, in which certifiers attempt to ''substantiate'' every line item regardless of magnitude or innocuousness is ill advised, administratively burdensome, and unduly restrictive. As argued by many commenters, that approach is unreasonable, onerous to applicants and sometimes excludes eligible firms. The final rule accomplishes two purposes: (1) Preserves recipient flexibility in seeking explanations for specific assets and liabilities and (2) shortens the form from 6 pages to a more manageable 3 pages, thereby streamlining the time it takes to complete it.

The DOT PNW form (attached as Appendix G) is the result of this balance of interests. As we proposed, this new form must be used without modification by certifiers and applicants whose economic disadvantaged status is relied upon for DBE certification. Section 26.67(a)(2)(i) and (ii) are amended to reflect this requirement. This is necessary to ensure that the requirements of this program are applied consistently by all certifying agencies. Language in the existing rule that requires requests for supporting documentation not be unduly lengthy, burdensome, or intrusive remains unchanged. We remind recipients that with regard to personal net worth, we intend for all information collection requests to serve a useful purpose that addresses a specific question regarding a value stated in the form and not in any way operate as authority to collect all possible documentation for each listed asset or a general requirement that business owners obtain appraisals of all assets. We urge recipients to exercise judgment and restraint when requesting reasonable supporting documentation. Personal net worth statements should not be requested for owners that are not claiming social and economic disadvantage. Nor should a personal net worth statement be requested from persons who are not listed as comprising 51% or more of the ownership percentage of the applicant firm.

The style and content of the form were carefully considered by the Department in this rulemaking. We are cognizant of concerns that too radical a departure from a form that certifiers are accustomed to using may cause some temporary confusion and corresponding administrative burdens. However, the Department believes that a standardized DOT PNW form accompanying the standard DBE Certification Application (also revised in this final rule) is a significant step in uniformity of practice. The DOT PNW form is modelled closely on SBA's Form 413, with differences tailored to DBE

program-specific needs, e.g., not to include the 49 CFR 26.67(a)(2)(iii) exclusions for ownership interest in the firm and equity in the primary residence on the front page.

The Department notes that the estimated burden hours contained in the proposed rule were based on the Department's experience in working with DBE and UCP agencies and our intent to produce a DBE-specific PNW form that includes the information typically needed to perform the certification function, but is not overly burdensome. Further, our proposed rule's estimate of 8 hours to complete the proposed PNW form is greater than the 1.5 hours SBA estimates for its form, which was designed to take into account the different purposes between the two programs and the fact that DBE applicants often need to supplement their form with supporting documentation. As discussed above, in response to comments, we have decided to lessen the requirements of the final form in today's final rule and believe that our original estimate, based on the form that will be now finalized, is reduced to 2 hours, slightly more than the SBA estimate for its form.

Another change we proposed and that we finalize today is that the instructions at the top of the form are customized for the DBE and ACDBE programs. Like SBA, we are requiring each owner to list on page 1 all assets (whether solely or jointly held) and specify liabilities. The categories of assets and liabilities we require mirror closely the SBA's categories but have minor differences. The Department's PNW form omits ''sources of income and contingent liabilities,'' which is contained on SBA's form. On page 2, section 4 of the DOT PNW form, owners must report any equity line of credit balances on real estate holdings, how the asset was acquired (e.g. purchase, inherit, divorce, gift), and the source of market valuation. Owners must also detail in section 6, the nature of the personal property or assets, such as automobiles and other vehicles, their household goods, and any accounts receivable, placing a value on such items in the appropriate column. We added a column to this section asking whether any of these assets are insured. We envision recipients (again on a case-by-case basis) may wish to request copies of any insurance valuation on these assets listed as insured and copies of notes or liens. Sections 7 (value of other business investments) and 9 (transfer of assets) are unique to the Department's PNW form and require applicants to list these activities as described.

We have decided not to require submission of the PNW form by the spouse of a disadvantaged owner who is not involved in the operations of the business. We agree that such a requirement is unduly burdensome for the applicant and the certifier, needlessly intrudes into the affairs of individuals who are not participants in the program, and is not necessary since certifiers may request this information as needed on a case-by-case basis, but not as a routine matter.

We also agree with the commenters urging us to extend the treatment of assets held by married couples to include domestic partnerships and civil unions that are legally recognized under State law. To this end, we have added a definition of spouse that includes same-sex or opposite-sex couples that are part of a domestic partnership or civil union recognized under State law.

Concurrent with this final rule and as requested by many commenters, the Departmental Office of Civil Rights is making the final form available for distribution in a screen-fillable portable document (PDF) format, which recipients may post on their Web sites and distribute to applicants as part of the DBE certification application process.

Economic Disadvantage 49 CFR 26.67

Since 2007, the Department has, through guidance, recommended that recipients take account of evidence that indicates assets held by an individual suggest he or she is not economically disadvantaged even though the personal net worth falls below the $1.32 million threshold that gives rise to a rebuttable presumption of economic disadvantage. The guidance reflects the Department's view that the purpose and intent of the economic disadvantage criteria is to more narrowly tailor the program to only reach those disadvantaged individuals adversely impacted by discrimination and the effects of discrimination and to accomplish the goal of remedying the effects of discrimination. The presumption is by regulation rebutted when the individual's personal net worth exceeds the $1.32 million cap. We proposed in the NPRM to codify the existing guidance to recognize that the presumption also may be rebutted if the individual's personal net worth falls below the cap, but the individual is, in fact, too wealthy to be considered disadvantaged by any reasonable measure. To illustrate the point, the guidance notes that under some circumstances a person with a very expensive house, a yacht, and extensive real or personal property holdings may be found not to be economically disadvantaged.

The Department also sought comment on whether a more bright-line approach would be preferable, such as whether someone with an adjusted gross income over one million dollars for two or three years on his or her Federal income tax return should not be presumed to be economically disadvantaged, regardless of their personal net worth (as defined by this program).

The Department received 42 comments on this issue. The difficulties potential applicants and recipients experience regarding economic disadvantage were expressed by many of the commenters and their views were not limited to whether the $1.32 million personal net worth cap is reasonable. Commenters mentioned several difficulties with both the current rule, the proposed codification of the ''accumulation of substantial wealth'' guidance, and the alternative bright-line approach tied to the adjusted gross income of the disadvantaged owners. Most commenters comprised of recipients, DBEs, and general contractors opposed amending the regulations to include the ability to accumulate substantial wealth as a basis for rebutting the presumption of economic disadvantage. The opponents viewed the proposal as vague, subjective, and likely to result in arbitrary decisions.

Many of the opponents of this approach believed that, if the Department were to finalize criteria for personal net worth beyond the existing calculation, a measure similar to the bright-line approach with varying adjusted gross income numbers over varying numbers of years would be preferable because it provides a more objective measure of whether an applicant is economically disadvantaged. Several commenters thought that the existing bright line of $1.32 million in personal net worth is sufficient. One commenter believes a bright-line approach helps certifiers because most are not accountants or tax experts. The Department also received comments specific to the application of the bright-line approach to S Corporations. Two commenters stated that using a bright-line approach was a false indicator for S Corporations in which the firm's income is passed through to DBE shareholders and thus is not a reflection of a shareholder's wealth. As defined by the U.S. Internal Revenue Service, S Corporations are corporations that elect to pass corporate income, losses, deductions, and credits through to their shareholders for federal tax purposes. One commenter did not

believe that a bright-line approach was appropriate for S Corporations and Limited Liability Corporations because owners of these entities recoup the profits on their personal returns in proportion to their ownership interests. The commenter went on to say that these entities distribute sufficient cash to their owners to enable them to pay income tax and this distribution does not increase the person's net worth.

DOT Response: As noted in the NPRM, the purpose of this proposed regulatory amendment is to give recipients a tool to exclude from the program someone who, in terms of overall assets is what a reasonable person would consider to be a wealthy individual, even if one with liabilities sufficient to bring his or her personal net worth under $1.32 million. The Department continues to believe that this kind of tool must be available to ensure that the program truly benefits those for whom it is intended. We have seen in certification appeals upheld by the Federal courts the reasoned application of this standard based on specific facts and circumstances in the entire administrative record that support the decision. *See SRS Technologies* v. *United States,* 894 F. Supp 8 (D.D.C. 1995); *SRS Technologies* v. *United States,* 843 F. Supp. 740 (D.D.C. 1994).

We acknowledge the benefits of a bright-line approach (whether it is the adjusted gross income approach proposed in the NPRM or the current bright-line personal net worth cap that exist in the regulations) and the potential for manipulation to fall within the bright-line. The Department strongly believes that recipients must be able to look beyond the individual's personal net worth bottom line and consider his or her overall economic situation in cases where the specific facts suggest the individual is obviously wealthy with resources indicating to a reasonable person that he or she is not economically disadvantaged. Thus, the final rule incorporates the guidance but does not go beyond it as proposed. We have not included as factors ''unlimited growth potential'' or ''has not experienced impediments to obtaining access to financing, markets, and resources.'' We believe that those additional criteria are unnecessary because the essence of what we intend is captured in the ''ability to accumulate substantial wealth'' standard as evidenced by the individual's income and the value of the various accumulated personal assets.

The Department, however, is sympathetic to the concerns raised by many commenters that the subjective standard could lead to arbitrary decisions by recipients. To address this concern, we have included in the final rule specific factors recipients may consider in evaluating the economic disadvantaged status of an applicant or owner in this circumstance. Those factors include (1) whether the average adjusted gross income of the owner over the most recent three-year period exceeds $350,000; (2) whether the income was unusual and not likely to occur in the future (e.g., inheritance); (3) whether the earnings were offset by losses (e.g., winnings and losses from gambling); (4) whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm; (5) other evidence that income is not indicative of lack of economic disadvantage, and (6) whether the fair market value of all assets exceed $6 million. Similar factors are used by the Small Business Administration in its application of the economic disadvantage criteria to individuals seeking to participate in its Small Disadvantaged Business and 8(a) programs, which has long recognized the ability to accumulate substantial wealth as a basis for a finding of no economic disadvantage. The Federal courts have upheld consideration of income levels tied to the top 1–2% of high income wage earners in the United States to evaluate the economic disadvantaged status of a small business owner as reasonably based, not the subject of arbitrary decision making. Id. SRS Technologies cases cited above. As noted by the SBA, ''. . . the average income for a small business owner is generally higher than the average income for the population at large and, therefore, what appears to be a high benchmark is merely reflective of the small business community.'' See preamble to the 2011 SBA Final Rule, 76 FR 8222–01.

We stress that we are not, with this change, requiring that a recipient consider these factors for every disadvantaged owner whose PNW would be below the current regulatory cap. Instead, today's final rule merely provides recipients who have a reasonable basis to believe that a particular owner should not be considered economically disadvantaged, despite their PNW, with the explicit authority to look at evidence beyond the PNW to determine whether that owner is truly economically disadvantaged. Further, the listed factors are simply intended to provide guidance to recipients about the kind of evidence they may look to in making this determination; it is not intended to be a checklist. An adjusted gross income below $350,000 may in appropriate circumstances indicate a lack of economic disadvantage. The determination should be based on the totality of the circumstances. Finally, as the final regulatory text clarifies, a recipient can only rebut the presumption of disadvantage under this standard through a proceeding that follows the same procedures as those used to remove a firm's eligibility under § 26.87. The Department believes that this procedural safeguard makes it unlikely that recipients will proceed in attempting to rebut the presumption of disadvantage in all but the most egregious cases.

Transfer of Assets 49 CFR 26.67

Under existing guidance contained in Appendix E, assets that individuals have transferred two years prior to filing their certification application may be counted when calculating their PNW. The Department proposed to codify the guidance by placing it in the rule text at § 26.67. The proposed rule essentially attributes to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to the submission of an application for certification or within two years of a participant's annual program review. This transfer rule would not apply to transfers to, or on behalf of, an immediate family member for that individual's education, medical expenses, or some other form of essential support or transfers to immediate family members that are consistent with the customary recognition of special occasions like birthdays, graduations, anniversaries, and retirements. We also proposed to expand the transfer rule to include transfers from the DBE owner to the applicant firm to ensure that such transfer are not used to enable the DBE owner to qualify for the program.

Most of the commenters, comprised largely of State departments of transportation and transit authorities, supported the proposed rule. Several commenters suggested there be no exception for transfers to a spouse and no exception where it can be demonstrated that the transfer was done to qualify for the program. Other commenters asked for clarification of certain terms (i.e., ''transfer'' or ''essential support'') or a narrowing of the exclusions. The few commenters that opposed the proposed rule provided little detail.

DOT Response: The Department is adopting the rule with a minor modification to the text. We see no reason to treat a spouse differently than other immediate family members regarding the exception. We agree with commenters that the exceptions would not apply if there is evidence indicating that a transfer to an immediate family member was in fact designed to enable the disadvantaged owner to evade the PNW threshold and thereby qualify for the program or remain in the program. The burden is on the applicant or the participant to demonstrate that the transfer is covered by the exception. In our experience with the Appendix E guidance, recipients have not had difficultly applying the transfer restrictions. However, we will through guidance provide clarification of terms used in the rule if needed based on specific facts and circumstances presented to the Department.

Certification Application Form

The Department proposed a revised nationwide uniform DBE Certification Application Form to replace the one in use since 2003. In the 2003 proposed rule (68 FR 35542) at that time, we urged commenters to think about what must be contained in the application and what might be reserved for an on-site review. The resulting application reflected the Department's goal of retaining the basic structure originating in the 1999 rule that was manageable and easy to follow for applicants who must fill out the form, while simultaneously being accessible and practical for the many recipients required to accept the form. We acknowledged a concern about keeping the application within reasonable limit, regarding its length and content, to prevent it from becoming too unwieldy and burdensome. We allowed recipients to supplement the form with written consent of the operating administration with a one to two page attachment containing the additional information collection requirements. We also required applicants to submit additional supporting documents not already required by the uniform application. We strongly suggested that the form be streamlined and that additional information should be sought during the on-site review rather than during the application process. As explained in the 2012 NPRM, the 2003 application was designed to be more streamlined and user-friendly, yet comprehensive enough to supply recipients with the necessary information to form their initial line of questioning prior to and during an on-site visit. In addition, the application was designed to further assist recipients in making determinations as to an applicant's eligibility for the DBE program.

In the Department's view, the above objectives still hold true, especially now that we provide for interstate certification. Pursuant to the January 28, 2011, final rule revision, provisions for interstate certification were added requiring applicants to provide to State B a complete copy of their application form, all supporting documentation, and other information submitted to State A or other States wherein the firm is certified. The application, therefore, must serve the needs of both sets of certifiers by providing a window into a firm's eligibility. As required by 49 CFR 26.73, eligibility determinations are to be based on present circumstances.

The Department's proposed application form as presented in the NPRM was longer in length than the existing form because of extra space added for applicants to write in their answer. We first noticed the need for more room for answers in the course of processing denial and decertification appeals where information was sometimes handwritten and overflowing the strict margins of the old form. However, despite our intention to make the form more amenable for applicants to have the option to fully explain their responses directly on the form, commenters raised concerns about the length of the form.

DOT Response: In response to comments about length and more specific technical comments about various aspects of the proposed form, we have shortened the entry spaces and removed several details that in our experience were not useful to include in the application but may have been more suitable questions to pose during an on-site review, as needed. For example, in the banking information space, we removed the need to insert the bank's phone number and address, but added a space identifying the names of individuals able to sign checks on the account. Similarly, in the bonding entry, we removed the need to specify the binder number, and the contact information of the bonding agent/broker. These items may be useful to a certifier, but we want to limit the amount of things an owner would have to ''look up'' to complete its application. The new form also removes obsolete material from the roadmap for applicants (page 1) and page 2 (e.g., relating to the long-expired Small Business Administration (SBA)—DOT Memorandum of Understanding). The final application form contains new items that were in the proposed form we believe are important. First, the dates of any site visits conducted by other UCPs (besides the home State) are important facts that will enable certifiers to determine if any other certifier has assessed the firm's eligibility as a DBE. If an entry here is checked, we encourage certifiers to obtain the site visit report and denial/decertification decisions from their UCP members or fellow certifiers in other States. Second, the new application offers ample space for a firm to provide a concise description of its primary activities, the products and/or services it provides, and the North American Industry Classification System (NAICS) codes it believes apply to the firm. This description will help certifiers prepare for their on-site visit but also assign NAICS codes and list the firm properly in the UCP online directory if certified.

One section of the old form that deserves more explanation as to why it was revised is the area where applicants are asked to specify by name, title, ethnicity, and gender the firm's management personnel who control several key areas, such as financial decisions, estimating and bidding, contract negotiation, field supervision, etc. In crafting the NPRM, we believed then, as we do now, that some of these entries could be reworded or broken down into sub-questions and we have incorporated these changes in the new form. For instance, ''sets policy for company direction/scope of operations,'' ''hire and fire field staff or crew,'' and ''attend bid opening and lettings,'' are new entries that examine more broadly the authority and responsibilities and authority roles of the majority owner vis-à-vis others in the firm. A more descriptive parenthetical is offered for ''office management,'' which now adds billing, accounts receivable/payable, etc. within the entry.

We have also added a feature we modelled after a few certifying agencies who supplemented their form with a chart for applicants to specify the frequency by which owners and key management personnel perform the relevant tasks. Applicants will now circle, in the appropriate rows, how often a person is involved in the functions identified as: ''always'', ''frequently'', ''seldom'', or ''never.'' These types of responses are very common across all certifiers who often ask this question during the on-site review. At least one commenter opposed this addition believing that assessing the amount of time owners and others devote implies that if they do not go into the field and supervise operations they are not in charge of the firm; and small business owners

frequently spend time arranging office-related matters (insurance, banking, accounting, etc.) to keep a business operational. We believe at a minimum, certifiers need to understand who does what, where, and for how long, when they assess owners' control of their firm. It is our intent that this simple breakdown of the frequency of the tasks identified will aid certifiers as they prepare for their on-site review of the owners, enabling them to ask targeted questions concerning the owners' control of their firm. The Department does not intend for certifiers to treat the new frequency chart as independently determinative of a firm's eligibility; rather, it is a tool to narrow the areas of further inquiry.

The application checklist, a vital component of the process to becoming a DBE, has also been simplified and divided into mandatory and optional items. Items from the original checklist have been left largely intact. However, to ease the paperwork burden, some are now no longer mandatory for all applicants (e.g., trust agreements held by any owner claiming disadvantaged status, year-end balance sheets and income statements for the past 3 years (or life of firm, if less than 3 years)). The Department intends for recipients to request and collect only the information necessary to determine eligibility. Smaller businesses with simple structures should not be subjected to unnecessarily burdensome data requests. We re-emphasize here that an owner's affidavit of certification attests to the fact that the information submitted is true and correct. Applicants should not be penalized for not having (or being unable to produce) items from the optional documentation list. Recipients should base eligibility decisions on the information they receive from the applicant.

To help simplify the data collection, we also clarified that the request for all applicants to submit tax returns should be limited to Federal not State returns. Two items identified in the NPRM were added to the checklist—the résumés of key personnel for the firm and any firm requests for current year federal tax return filing extensions. Résumés of key personnel are frequently requested of the applicant or provided voluntarily and should be readily available.

Various miscellaneous comments focused on the role of the Department in the certification process, with commenters suggesting that we host an on-line system for applications. Such a system would be difficult for the Department to manage and not in keeping with the delegation of the certification function to recipients and others through their UCPs. We will conspicuously post the uniform certification application, instructions, certification affidavit, and checklist on the Departmental Office of Civil Rights Web site, *https://www.civilrights.dot.gov*. A handful of commenters (including a member of Congress) spoke to the idea that newly established firms should only be required to complete a shorter more simplified form. In response, we note that newer firms may not have the level of documentation a larger firm will and can easily enter ''n/a'' (not applicable) in the entries provided. In the interest of uniformity, it is more beneficial to require all applicants to submit the standardized form. We remind certifiers that a firm lacking certain documentation or a history of providing a particular good or service is, under 49 CFR 26.73(b), not necessarily ineligible for certification.

Uniform Report of DBE Awards or Commitments and Payments, Appendix B

The Department proposed several changes to the Uniform Report of DBE Awards or Commitments and Payments (Uniform Report) designed to address concerns regarding the absence of data on women-owned DBE participation by race, confusing instructions, the differing needs of the various types of businesses/organizations participating in the program, and the collection of payments to DBEs on a ''real time'' basis. In response, we proposed to: (1) Create separate forms for general DBE reports and projects reports; (2) clarify the instructions; (3) collect information on minority women-owned DBEs; and (4) collect information on actual payments to DBEs on ongoing contracts performed during the reporting period (i.e., real time). The proposed forms in the NPRM kept the standard format but provided clearer instructions for completing some fields. We also proposed a surrogate for comparing DBE payments to the corresponding DBE commitments to respond to concerns raised by the Government Accountability Office (GAO) in its 2011 report on the adequacy of using DBE commitment data to determine whether a recipient is meeting its overall DBE goal. As we explained in the NPRM, the GAO criticized the existing form because it did not permit DOT to match recipients' DBE commitments in a given year with actual payments made to DBEs on the contracts to which the commitments pertained. The existing form provides information on the funds that are committed to DBEs in contracts let each year. However, the ''achievements'' block on the form refers to DBE payments that took place during the current year, including payments relating to contracts let in previous years, but could not include payments relating to contracts let in the current year that will not be made until future years.

Thirty-six (36) commenters addressed some aspect of the proposed changes to the existing Uniform Report. The majority of commenters agreed that the Uniform Report needs changes. Six commenters expressed general support for the proposed revisions and six expressed general opposition. Three commenters asked for simplified reporting requirements.

The collection of data on women-owned DBEs based on race/ethnicity drew comments from four general contractors associations, two of which suggested that the Department is creating additional requirements beyond what Congress intended in MAP–21. One commenter expressed the view that the breakout of DBE participation data by gender and race does nothing to improve the program and serves no purpose. Another commenter stated that prime contractors should not be responsible for gathering and reporting the racial classification of the women-owned DBE firms used on a project and that the data should not be used by the Department to set separate goals for women based on race.

The proposal to collect actual ''real time'' payment data on ongoing contracts drew a number of comments, many of which were favorable. Supporters viewed the information as a better snapshot of DBE participation and more closely connected to the overall DBE goal in some instances than is obtained through the existing collection of payment data on completed contracts. Proponents of this view include the Transit Vehicle Manufacturers (TVMs) who would like to submit data only on current payments, as well as some recipients that undertake mega projects (e.g., design/build) that may not show DBE activity at the outset. Some opponents thought the opposite, preferring to report payments on completed contracts to payments on ongoing contracts because, in their view, one can make the final comparison between the contract goal and actual payments to DBEs. One opponent was more concerned with the potential for the Department to incorrectly judge the recipients' overall performance, based on the payment data on ongoing contracts since the data would be affected by project schedules, project delays, change orders, and weather, all factors that impact the

schedule of DBE work and therefore payments to DBEs on a project. Another commenter expressed grave concerns about reporting on the current payment status of all active federally-assisted projects, citing the significant resources required and the challenge presented for those with electronic or paper processes. Two commenters suggested that the Department define ''ongoing contracts'' and one commenter asked for a definition of ''completed contract.''

To address concerns raised by the GAO about the lack of a match between DBE commitments in a given year and the actual payments to DBEs on the contracts pertaining to the commitments, the NPRM sought to provide options for connecting work committed to DBEs with actual payments to the committed DBEs that are credited toward the overall goal for a particular year. One option was to collect data in 3–5 year groupings and calculate the average amount of commitments and the average amount of payments, providing a reasonable approximation for comparing the extent to which commitments result in actual payments over a specified period of time. Alternatively, a proposed modification to the existing form that would track payments credited to contracts let over a 5-year period was described in the preamble in an attempt to reach the result the GAO recommended. However, we acknowledged that it would take several years to determine the extent to which commitments resulted in payments that enabled a recipient to meet the relevant overall DBE goal and that the collection and reporting of this data would involve greater resources by recipients that may yield information of limited use for program administration and oversight purposes. We invited the public to offer other ideas that would meet the accountability and program administration objectives of the Department.

Comments on this issue supported the idea but did not think the proposed options would produce current usable information. One commenter indicated that making programmatic changes 3 years after the data is collected seems irrelevant. A State department of transportation objected to the administrative burden of accumulating and reporting data over several years, diverting resources from the ''good work'' of the DBE program for this purpose. In fact, of the six commenters who registered disapproval, four did so because of the level of effort needed to maintain this data. Two of the opponents did not think the proposals sufficiently addressed the GAO's concerns. One commenter suggested that the Department establish a workgroup with external stakeholders to address the GAO's concern.

DOT Response: The Department has decided to make final the revisions to the Uniform Report and the accompanying instructions to be used by all recipients for general reporting, project reporting, and reporting by TVMs. The proposed ''general reporting'' and ''project reporting'' forms published in the NPRM were identical in format and content. The difference between the proposed forms lies in the instructions for completing one part of the form (Section A) when reporting on a project versus general reporting on DBE participation achieved during a specified period of time. Thus, the same form will be used by recipients for the different purposes as is done currently. Recipients will be expected to use the revised form to report on activity in Federal Fiscal Year 2015 (October 1, 2014–September 30, 2015). For example, the first report for FHWA and FTA recipients using the revised form will be due June 1, 2015 for the period beginning October 1, 2014 through March 31, 2015. The second report will be due December 1, 2015 for the period April 1, 2015 through September 30, 2015. Federal Aviation Administration (FAA) recipients will use the revised forms when they submit the annual report that is due December 1, 2015. Each operating administration will provide technical assistance and guidance to their recipients to ensure they understand what is required in each field for general reporting, project reporting, and reporting by TVMs. Collecting data on DBE participation by minority women will enable the Department to more fully respond to Congressional inquiries.

Actual payment data on ongoing contracts collected in Section C of the report applies to work on federally-assisted contracts performed during the reporting period. Payment data collected in Section D on completed contracts applies to contracts that the recipient has determined to be fully performed and thereby completed. No more work is required to be performed under the completed contract. In both instances, the data on payments to DBEs provides a ''snap shot'' of monies actually paid to DBEs, compared to dollars committed or awarded to DBEs but not yet paid, during the reporting period. The payment data on completed contracts allows recipients and the Department to determine success in meeting contract goals, while the payment data on ongoing contracts, over time, may provide some indication of how well yearly overall goals are being met.

The Department is sensitive to the concerns raised by commenters about the practicality of the proposals offered in response to the GAO report. The additional payment data for work performed during the reporting period on ongoing contracts may enable us to better assess the adequacy of the existing comparisons used to determine how well annual overall goals are being met through dollars expended with DBEs. Because most DOT-assisted contracts are multi-year contracts, payments made pursuant to those contracts will cross more than one fiscal year. However, in those cases where the yearly overall DBE goal does not change radically from year to year, the on-going payment data may provide a closer match than currently exists. For now, reliance on contractual commitments made during the fiscal year to determine the extent to which overall DBE goals for that fiscal year are met provides a reasonable proxy. The Department will continue to explore ways of addressing the GAO's concern that are likely to produce ''real time,'' useful information that does not strain existing recipient resources.

MAP–21 Data Reports

MAP–21 reauthorized the DBE program and included Congressional findings on the continued compelling need for the program. Section 1101(b)(4) of the statute included a long-standing but not yet implemented statutory requirement that States notify the Secretary in writing of the percentage of small business concerns that are controlled by: (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. The statute also directs the States to include the location of the aforementioned small businesses. The Department proposed to implement this requirement through the State Unified Certification Programs (UCP) that maintain statewide directories of all small businesses certified as DBEs. The information required by MAP–21 would be submitted to the Departmental Office of Civil Rights, the lead agency in the Office of the Secretary responsible for overseeing DOT implementation of the DBE program. For those firms that fall into more than one of the three categories, we proposed that the UCP agencies include a firm in the category applicable to the owner with the largest stake in the firm who is also involved in controlling the firm. We sought

comment on whether the Uniform Report of DBE Awards or Commitments and Payments should be the vehicle used to report the MAP–21 information.

Five commenters directly addressed this proposal. Only one of the commenters, a DBE contractor advocacy organization, opposed the collection and reporting of this information, stating that it serves no purpose. Four commenters support reporting the MAP–21 information separately from the Uniform Report and the advocacy organization suggested that the information should be submitted near the beginning of the fiscal year (October 15) to be consistent with other MAP–21 reporting requirements, as it would also be helpful for the purposes of those recipients involved in the program to have that information early. One commenter thought it would be more efficient to include it with the Uniform Report and that it could provide useful comparative data.

DOT Response: The Department has decided to require each State department of transportation, on behalf of the UCP, to submit the MAP–21 information to the Departmental Office of Civil Rights each year by January 1st, beginning in 2015. Most State departments of transportation are certifying agencies within the UCP; those who are not certifying agencies are, nonetheless, members of the UCP and share in the responsibility of making sure the UCP complies with DOT requirements. We agree that the information should not be reported on the Uniform Report; instead, it should be reported in a letter to the Director of the Departmental Office of Civil Rights. As indicated in the NPRM, to carry out this requirement, the UCPs would go through their statewide unified DBE directories and count the number of firms controlled, respectively, by: (1) White women, (2) minority or other men, and (3) minority women, and then convert the numbers to percentages, showing the calculations. The information reported would include the location of the firms in the State; it would not include ACDBEs in the numbers.

Certification Provisions

Size Standard 49 CFR 26.65

The Department proposed to adjust the statutory gross receipts cap from $22.41 million to $23.98 million for inflation and to clarify that the size standard that applies to a particular firm is the one appropriate to the firm's primary industry classification. To qualify as a small business, the average annual gross receipts of the firm (including its affiliates) over the previous three fiscal years shall not exceed this cap. Of the 23 comments received from State departments of transportation, UCPs, transit authorities, and representatives of DBEs and general contractors, most supported the increase in the size standard and a few suggested it be made effective immediately. Those that opposed the change (and some of the supporters) asked that the Department clarify what is meant by ''primary industry classification.''

DOT Response: The Department is amending the gross receipts cap for the financial assistance programs in 49 CFR Part 26 as proposed to $23.98 million to ensure that the opportunity of small businesses to participate in the DBE program remains unchanged after taking inflation into account. Under MAP–21 Section 1101(b)(2)(A) the Secretary of Transportation is instructed to make the adjustment annually for inflation. With this adjustment, if a firm's gross receipts, averaged over the firm's previous three fiscal years, exceed $23.98 million, then it exceeds the small business size limit for participation in the DBE program. We remind recipients that firms are not eligible as DBEs if they exceed the relevant NAICS code size limitation for the type(s) of work the firm seeks to perform in DOT-assisted contract, which may be lower than $23.98 million and may not constitute the primary business of the firm. The term ''primary industry classification'' is currently defined in the DBE program regulations at 49 CFR 26.5. To avoid any confusion on the application of SBA size standards to the various NAICS codes in which a firm may be certified, we have clarified the text of § 26.65(a) so that it is not limited to the firm's primary industry classification.

Ownership 49 CFR 26.69

The Department proposed several changes to the rules that govern ownership of a DBE to provide greater clarity and specificity to aid recipients in addressing situations in which non-disadvantaged individuals or firms are involved with the DBE and to address concerns raised by the decision of the court in *The Grove, Inc.* v. *U.S. Department of Transportation,* 578 F. Supp. 2d 37 (D.D.C., 2008).

This discussion focuses on the proposed changes most commented upon. Specifically, the NPRM proposed to explicitly prohibit a non-disadvantaged owner's prior or superior rights to profits (§ 26.69(c)(3)); proposed clarifications relating to funding streams and sources of capital used to acquire an ownership interest in the firm (§ 26.69(c)(1)); provided further specificity through examples on what constitutes capital contributions not commensurate with the DBE's value (including new examples of arrangements in which ownership fails to meet the ''real, substantial, and continuing'' requirements in the existing rule) (§ 26.69(c)(2)); and proposed to require that disadvantaged owners be entitled to at least 51% of dividends and other distributions (including liquidations) (§ 26.69(c)(4)). The NPRM further proposed to require that spousal renunciations be contemporaneous with applicable capital contributions or other transfers of marital or joint assets. Finally, the NPRM proposed to require close scrutiny of assets (including ownership interests in applicant firms) that disadvantaged owners obtain or other seller-nonbank financed transactions. This last proposed change would, among other specified conditions, generally require prevailing market (arm's length) terms with full recourse to the disadvantaged owners and/or to assets other than the ownership interest or an interest in the firm's profits.

The ownership proposals drew comments (33 in all) from State departments of transportation, transit authorities, UCPs, associations of minority business owners, other business owners, trade associations, counsel for DBE firms, a former DOT official, and a member of Congress. None expressed specific views on every proposal although several expressed either blanket approval or blanket reservations. Twenty commenters exclusively supported the proposals while thirteen expressed concerns with at least some of the changes.

A clear majority of recipients and UCPs supported most changes as providing clarity and ensuring program integrity. Private parties and trade associations, with some exceptions, expressed concern that the proposals overreached—by being too stringent, subjective, or burdensome to administer. More than a few commenters suggested that the proposals, if adopted, would discourage legitimate DBE participation, lead to inconsistent certification results across jurisdictions, or trap worthy but unsophisticated owners.

A transportation company opined that the ''substantial and complex revisions and additions'' to § 26.69 would require firm owners to attend ''a workshop to understand the criteria;'' would require recipients to employ staff with real estate, accounting, business management, and finance expertise; and would require the Department to

conduct nationwide training in a classroom setting. Some State transportation departments similarly objected that the careful scrutiny conditions would increase recipient time spent evaluating financial records and require hiring outside experts at added expense. A former Department official noted that this provision could create unwarranted barriers to program entry because in situations involving non-bank financing, ''the list of five items required in the proposed § 26.69(k) could be quite difficult to produce.''

Regarding the proposed change to the spousal renunciation rule, a transit authority proposed that DOT scrap the rule as ''unduly burdensome'' and allow spousal renunciations that occur at least two years after the use of marital assets to acquire an ownership interest in an applicant firm, provided that ''the transfer was not made solely for the purposes of obtaining DBE certification.'' DBE firm counsel and at least one State department of transportation objected to the renunciation rule as unduly burdensome, requiring excessive owner sophistication regarding certification standards, and discriminatory against DBEs in community property states. One trade association ''enthusiastically'' supported the ownership changes, however, particularly the new marital assets rule, and a transportation department urged that DOT provide new guidance regarding when a spouse's transfer is considered to be for the purpose of obtaining certification. Another transportation department feared that the renunciation rule would lead to fewer women owners qualifying for the DBE program; it requested that DOT generally ''explain more specifically what types of documents'' are sufficient to substantiate a firm's capitalization, including the source of funds. Finally, an association of women contractors criticized the renunciation proposal as a Catch-22 (renunciation indicates ''forethought to DBE creation'') that may be contrary to State law and current certification rules.

DOT Response: The Department carefully considered, evaluated, and weighed comments on both sides. We adopted some provisions as proposed (e.g., § 26.69(c)) and rejected others due to stakeholder concerns and possible unintended consequences.

We retain the existing marital asset provision of § 26.69(i) as currently written and do not adopt the proposed change to require spousal renunciation contemporaneous with the transfer. To adopt such a change might unnecessarily inhibit applicants from allocating marital assets in such a way so that a disadvantaged spouse can establish and fund their business using marital funds. The current rule has adequate protections in place to prevent a non-disadvantaged spouse from retaining ownership of marital assets used to acquire ownership of an applicant firm or of an ownership interest in the firm. As long as the non-disadvantaged spouse irrevocably renounces and transfers all rights in the assets/ownership interest in the manner sanctioned by State law in which either spouse or the firm is domiciled (as the rule currently provides), we see no reason to require a renunciation at the time of the transfer. Recipients should not view a firm's submission of renunciation contemporaneous with its application as precluding eligibility.

Regarding the careful scrutiny conditions in the proposed changes in § 26.69(k), we think it prudent not to finalize the revisions pending further study and review. Our proposal would have required careful scrutiny of situations where the disadvantaged owners of the firm obtain interests in a business or other assets from a seller-financed sale of the firm or in cases where a loan or proceeds from a non-financial institution was used by the owner to purchase the interest. The goal was to guard against seller-financed acquisitions (whether stock or assets) intended to disguise a non-disadvantaged owned business as a DBE firm. We agree with commenters that as written, the proposed language imposing mandatory conditions on transactions would be difficult for recipients to implement and has the potential of unfairly limiting the range of legitimate arrangements.

The Department adopts a revision we proposed to § 26.69(c)(3), which currently requires that a firm's disadvantaged owners must ''share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.'' This concept has proven difficult for certifiers to implement because of the tendency to interpret the phrase ''profits commensurate with their ownership interests'' to mean that the disadvantaged owners must be the highest paid persons in the firm, and to tie in § 26.71(i)'s mandate to ''consider remuneration'' differences between disadvantaged owners and other participants in the firm. We clarify here in this preamble and in the final rule for ownership purposes of § 26.69, the disadvantaged owners should be entitled to the profits and loss commensurate with their ownership interests; and any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits are grounds for denial of certification. This added provision is meant to be broad and is not absolute. There may be circumstances, particularly in franchise situations, where such an arrangement may be acceptable.

Control 49 CFR 26.71

Regarding control, the NPRM proposed clarifications to the rules concerning the involvement of non-disadvantaged individuals in the affairs of the firm by establishing more stringent requirements to ensure the disadvantaged owner(s) is in control of the company. To that end, the Department proposed to delineate some situations, circumstances, or arrangements (through examples) in which the involvement of a non-disadvantaged individual who is a former employer of the disadvantaged owner(s) may indicate a lack of control by the disadvantaged owner(s) and consequently may form the basis for denying certification. The examples included situations where the non-disadvantaged former employer controls the Board of Directors, contrary to existing requirements in 49 CFR 26.71(e); provides critical financial, bonding, or license support that enables the former employer to significantly influence business decisions; and loan arrangements or business relationships that cause dependence that prevents the disadvantaged owner from exercising independent judgment without great economic risk. In such cases, the recipient must determine that the relationship between the non-disadvantaged former employer and the disadvantaged individual or concern does not give the former employer ''actual control or the potential to control'' the DBE. The NPRM sought comment on whether there should be a presumption that non-disadvantaged owners who ostensibly transfer ownership and/or control to a disadvantaged person and remain involved with the firm in fact continue to control the firm.

Most of the commenters that addressed these proposed changes, many of whom were State departments of transportation, supported the change. Specific control-related comments included a UCP objecting to the proposed § 26.71(e) change as presuming misconduct and discouraging mentor-protégé relationships and spin-offs; and DBE counsel criticizing the proposed presumption as unnecessary and

antithetical to valid business and personal reasons for a non-disadvantaged person remaining associated with a DBE firm. A former DOT official likewise opined that the presumption could create unintentional barriers to entry ''for the very firms that are intended to benefit from the program.'' That official stated his view that when there is a legitimate business reason for the transfer, the firm should not be ineligible, even if DBE certification ''may have been part of the motivation.'' A member of Congress recommended that the Department hold ''additional stakeholder input sessions,'' particularly concerning paperwork and other burdens on DBE firms, applicants, and UCP/recipient staff.

DOT Response: As indicated in the NPRM, control is essential to program integrity designed to ensure that the benefits of the program reach the intended beneficiaries. The Department has decided to finalize the presumption of control by non-disadvantaged owners who remain involved in the company after a transfer. We emphasize that the presumption is rebuttable. Mentor-protégé relationships that conform to the guidance provided at 49 CFR 26.35 would rebut the presumption. Similarly, some of the explanations for continued involvement by the non-disadvantaged previous owner offered by one of the commenters may also rebut the presumption. For example, remaining with the firm to maintain contacts with previous customers, remaining temporarily to assist with the transfer, or maintaining a small ownership interest or minimal participation in the firm with no control of the company may rebut the presumption. Also, we have removed the phrase ''actual control or the potential to control'' to avoid muddying the concept; ''control'' is the issue.

We have removed the examples from the final rule because, upon further reflection, we believe they describe conduct that the rule itself prohibits or they are not helpful and may cause more confusion.

Prequalification 49 CFR 26.73

The Department proposed to revise the current provision at 49 CFR 26.73 to disconnect prequalification requirements (e.g., State or local conditions imposed on companies seeking to bid on certain categories of work) from certification requirements. As stated in the NPRM, the proposed change has the effect of not allowing prequalification to be used as a criterion for certification under any circumstances. This change would not prohibit the use of prequalification requirements that may exist for certain kinds of contracts. However, the prequalification status of a firm would not be relevant to an evaluation of whether the firm meets the requirements for certification as a DBE (e.g., size, social and economic disadvantaged status of the owners, ownership, and control). We noted that prequalification requirements may not exist for doing business in all modes of transportation (e.g., highways versus transit).

Only a few commenters addressed this proposed change, with most in favor because they agree it has no relevance to certification. The opponents of the change (mostly general contractors) read this proposal as eliminating the prequalification requirements imposed under State law (e.g., Pennsylvania) for DBEs while such requirements continue to exist for non-DBEs.

DOT Response: The Department has decided to finalize the rule as proposed. In doing so, we reiterate that this change has no effect on existing State laws that require all contractors and subcontractors performing work on contracts let by State departments of transportation or other government entities to be prequalified. Under the final rule, the certifying entities in a State UCP are not permitted to consider whether a firm seeking certification as a DBE is or is not prequalified. Certifiers are to analyze only the factors relevant to DBE eligibility (Subpart D of the rule) and not incorporate other recipient business requirements like prequalification status in decisions pertaining to the applicant's eligibility for certification in the DBE program, except as otherwise provided in the rules. Thus, a firm, once certified as a DBE, must satisfy any other applicable requirements imposed by the State on persons doing business with the State or in the State.

Certification Procedures 26.83

The Department proposed a variety of changes to the certification procedures that are set out at 49 CFR 26.83.

Additional Information Requirements

The Department proposed several changes to strengthen the process by which recipients evaluate the eligibility of a firm to be certified as a DBE and remain certified as a DBE. These proposed changes were intended to enable recipients to better assess the extent to which disadvantaged individuals own and control the kind of work the firm is certified to perform by: (1) Requiring key personnel be interviewed as part of the mandatory on-site review; (2) requiring the on-site visit be performed at the firm's principal place of business; (3) clarifying what should be covered in a review of the legal structure of a firm; (4) requiring the review of lease and loan agreements, bank signature cards, and payroll records; (5) obtaining information on the amount of work the firm has performed in the various NAICS codes in which the firm seeks certification; (6) clarifying that the applicant (the firm, its affiliates, and the disadvantaged owners) must provide income tax returns (Federal only) for the last three years; and (7) expressly authorizing the certifying agency to request clarification of information contained in the application at any time during the application process.

Most of the commenters (primarily State departments of transportation) supported the idea of interviewing key personnel, though several noted (as did the opponents) the increased administrative burden it may place on agency staff and suggested it be made an optional practice instead of an across-the-board requirement. Opponents questioned the need for such interviews and expressed concern about the focus on the involvement of the disadvantaged owner ''in the field,'' which is part of the rationale given by the Department for requiring key personnel interviews.

The proposal to request information on the amount of work performed in the NAICS code assignments requested by an applicant generated a fair number of comments opposed to the idea. The reasons for the opposition included concerns about the burden such a requirement would impose, the discriminatory impact it may have, the extent to which it contradicts or conflicts with the requirements of 49 CFR 26.73(b)(2), and the means to be used to determine the ''amount'' of work. Nearly all those who commented on this provision argued that the proposal to require three years of tax returns should only apply to Federal returns; State returns were viewed as unnecessary or not useful. Lastly, some commenters representing DBEs thought the proposal expressly authorizing certifiers to request clarification of information in the application at any time was too open-ended and needed to be limited.

DOT Response: The Department has decided to modify its proposed amendment to 49 CFR 26.83(c)(1) to leave it to the discretion of recipients whether key personnel identified by the recipient should be interviewed as part of the on-site review, to eliminate the proposal that applicants provide

information about the amount of work the firm has performed in the NAICS codes requested by the firm, and to only require Federal tax returns for the past 3 years. It is not the intent of the Department to create unnecessary administrative burdens for applicants or certifiers. We agree that the focus on the amount of work a DBE performs in a given NAICS code could be misinterpreted and applied in a way that adversely impacts newly formed start-up companies. In the DBE program, there is no requirement that a DBE perform a specific percentage of work for NAICS code assignment purposes. We are adopting the other proposed changes in § 26.83(c)(1).

By finalizing in the rule (§ 26.83(c)(4)) what is currently implied—that certifiers may seek clarification from applicants of any information contained in the application material—we are not conferring carte blanche authority to certifiers to request additional information beyond that which is currently allowed and subject to prior approval from the concerned operating administration pursuant to 49 CFR 26.83(c)(7). In the context of this rule change, the word ''clarification'' is to be given its commonly understood dictionary meaning—to be free of confusion or to make reasonably understandable. In other words, if the application material is unclear, confusing, or conflicting, the certifying agency may ask the applicant to clarify information already provided.

Certification Reviews

Under the current rule, recipients may conduct a certification review of a firm three years from the date of the most recent certification or sooner if appropriate in light of changed circumstances, a complaint, or other information affecting the firm's eligibility. The Department proposed to remove the reference to three years and instead clarify that a certification review should occur whenever there has been a change in the DBE's circumstances (i.e., a notice of change filed by the DBE), whenever a recipient becomes aware of information that raises a genuine question about the continued eligibility of a firm, or after a specified number of years set forth in the UCP agreement. The important point here is that a recipient may not, as a matter of course, require all DBEs reapply for certification every three years or go through a recertification process every three years that essentially requires a DBE resubmit a new application and all the accompanying documentation to remain certified. As the rule currently states, ''Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part through the procedures of § 26.87.''

DOT Response: Only a handful of commenters addressed this proposal. They uniformly supported it. The Department is finalizing the change as proposed.

Annual Affidavit of No Change

The Department proposed to require the submission every year of several additional documents to support the annual affidavit of no change DBEs currently file with recipients on the anniversary date of their certification. The additional documentation would include an updated statement of personal net worth, a record of any transfers of assets by the disadvantaged owner for less than fair market value to a family member within the preceding two years, all payments from the firm to the officers, owners, or directors, and the most recent Federal tax return.

Commenters were evenly divided among those who support the proposed change (mostly recipients) and those who oppose the change (mostly DBEs). Some commenters suggested the recipients be given the discretion to request the additional information if questions are raised about a DBE's status and others thought the Department should develop a uniform affidavit to be used by all.

DOT Response: The Department has decided to retain the existing rule and expressly provide for the submission of updated Federal tax information with the annual affidavit of no change, in addition to other documentation supporting the firm's size and gross receipts, which is currently required in 49 CFR 26.83(j) (''The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts.''). We are not adopting the proposal to annually require the submission of documentation beyond that which is currently required. We agree that the yearly submission of the additional documentation proposed in the NPRM would be unduly burdensome for DBEs and certifiers alike, is contrary to the basic premise underlying the ''no change affidavit,'' and begins to look like a reexamination of eligibility. Recipients have sufficient authority under current rules to request information from a DBE in individual cases if there is reason to believe the DBE may no longer be eligible to remain certified. See 49 CFR 26.83(h). With respect to the affidavit itself, the Department has developed a model affidavit for use by recipients that is posted on the Department's Web site and sees no need, at this time, to require its use instead of other forms suitable for this purpose developed by recipients.

Certification Denial 49 CFR 26.86

We proposed to clarify the effect of an appeal to the Department of a certification denial decision on the start of the waiting period that limits when an applicant may reapply for certification. The proposed rule adds language that states the appeal of a denial of certification does not extend (or toll the start of) the waiting period. In other words, the waiting period begins to run the day after the final decision at the State level, regardless of whether the firm appeals that decision to the Department.

The Department received comments from State departments of transportation, one State UCP, and representatives of general contractors and DBEs. The opponents of the proposal argued that the appeal process should be allowed to resolve issues concerning applicant eligibility before the applicant is allowed to reapply, so that certifiers are not wasting time or expending resources better spent elsewhere reviewing another application from the same applicant that may present the same issues that are before the Department for decision on appeal. In contrast, supporters of the proposed change simply agreed without further comment, presumably accepting the change as clarifying in nature.

DOT Response: The Department believes that an applicant who appeals the denial of its application for certification should not have to wait until the appeal has been decided before it can reapply at the end of the waiting period. In many instances, the deficiency that is the subject of the appeal may be cured reasonably quickly. There are, further, various cases in which the waiting period expires before the Department can render a decision. There should be no penalty or disincentive to appealing an adverse certifier decision; the Department intends that an appellant be no worse off than an applicant who does not appeal.

Decertification 49 CFR 26.87(f)

The Department proposed revisions to the grounds on which recipients may remove a DBE's certification to protect the integrity of the DBE program. The NPRM proposed to add three grounds for removal: (1) The certification

decision was clearly erroneous, (2) the DBE has failed to cooperate as required by 49 CFR 26.109, and (3) the DBE has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the program. The second and third grounds for removal are not new; the proposed revision simply places them among the existing list of five grounds for removal. As explained in the NPRM, the first ground revises the existing standard by replacing ''factually erroneous'' with ''clearly erroneous'' to address ''situations in which a mistake [of fact or law] was committed, in the absence of which the firm would not have been certified.'' The Department also sought comment on whether the suspension or debarment of a DBE should result in automatic decertification, should cause an evaluation of the DBE for decertification purposes, or should prompt some other action.

Recipients were universally supportive of the proposal to add additional grounds for removal of a DBE from the program. Representatives of DBEs and general contractors also registered support. An organization representing a caucus of women-owned businesses in Chicago and a DBE from Alabama opposed the changes. The focus of the opposition centered on the appropriateness of allowing removal for failing to timely file an annual no change affidavits or notice of change (i.e., failure to cooperate) or removal for not performing a commercially useful function (i.e., a pattern of conduct). One commenter suggested there be a higher standard of proof (i.e., willful disregard) applied to situations that involve not filing an annual no change affidavit in recognition of the fact that many DBEs have multiple certifications and may inadvertently fail to timely file required documents.

Most of the nineteen commenters on the question concerning the relationship between decertification and suspension and debarment proceedings were recipients (i.e., State Departments of Transportation, transit authorities, organizations that represent State DOTs) that overwhelmingly supported either the automatic decertification of a DBE that is suspended or debarred for any reason or the automatic decertification of a DBE that is suspended or debarred for conduct relevant or related to the DBE program. Five commenters opposed automatic decertification, suggesting instead that suspension and debarment should trigger an immediate evaluation of the DBE or should be a factor considered by the recipient based on the circumstances. One commenter suggested different treatment for suspensions and debarments: A debarment would result in permanent decertification, while a suspended DBE that is decertified could reapply at the end of the waiting period.

DOT Response: The Department has decided to make final the additional grounds for removal from the program. Two of the changes essentially represent a cross reference to existing regulations that permit removal for failure to cooperate and for a pattern of conduct indicating involvement in attempts to subvert the intent or requirements of the program. In the NPRM preamble discussion of this proposed change, we noted that the failure to cooperate covers such things as failing to send in affidavits of no change or notices of change and accompanying documents when needed. To be clear, the failure to cooperate is triggered when a DBE program participant fails to respond to a legitimate, reasonable request for information. If a DBE is notified by a recipient that it has not submitted the annual no change affidavit as required by the regulations, we would expect the DBE to respond promptly to such a request for information. Its failure to submit the requested information would be grounds for initiating a removal proceeding. Removal proceedings should not be initiated simply because the DBE failed to file the affidavit on its certification anniversary date, even though the information has been provided; nor should removal proceedings be continued once the DBE submits the requested information.

When a DBE is suspended or debarred based on a Federal, State, or local criminal indictment or conviction, or based on agency fact based proceedings, for conduct related to the DBE program (i.e., the DBE or its owners were indicted or convicted for perpetrating a fraud on the program related to the eligibility of the firm to be certified or fraud associated with the use of the DBE as a pass through or front company), the Department believes the DBE should be automatically decertified from the DBE program. Under those circumstances, recipients should not be required to initiate a separate § 26.87 decertification proceeding to remove a DBE. The suspension and debarment process affords the DBE an opportunity to be heard on the evidence of misconduct related to the DBE program that is relied upon to support the denial of bidding privileges. The same evidence would be relied upon to support decertification of the DBE, making further proceedings unnecessary. The Department believes that suspensions or debarments unrelated to the DBE program and consequently not bringing into question the DBE's size, disadvantage, ownership, control, or pattern of conduct to subvert the requirements of the program should not result in automatic removal from the DBE program. In those cases, recipients are advised to take appropriate action to note in the UCP directory the suspended or debarred status of the DBE. Because suspension or debarment actions are not permanent, we see no reason to make a decertification action permanent. Recipients must accept an application for certification from a previously suspended or debarred firm once the action is over.

Summary Suspension of Certification

The Department proposed to require the automatic or mandatory suspension of a DBE's certification without a hearing when a recipient has reason to believe that one or more of the disadvantaged owners needed to meet the ownership and control requirements is incarcerated or has died. As we indicted in the NPRM, a disadvantaged owner is considered necessary to the firm's eligibility if without that owner the firm would not meet the requirement of 51 percent ownership by disadvantaged individuals or the requirement that disadvantaged owners control the firm. Other material changes affecting the eligibility of the DBE to remain certified—like the sale of the firm to a new owner, the failure to notify the recipient of a material change in circumstances, or the failure to file the annual no change affidavit as currently required—may be the subject of a summary suspension (at the discretion of the recipient) but such action would not be automatic. During the period of suspension, the recipient must take steps to determine whether proceedings to remove the firm's certification should be initiated. While suspended, the DBE may not be counted toward contract goals on new contracts executed after the suspension but could continue to perform and be counted on contracts already underway. The recipient would have 30 days from receipt of information from the DBE challenging the suspension to determine whether to rescind the suspension or commence decertification proceedings through a UCP certifying entity.

Of the comments received from a combination of State departments of transportation, transit and airport authorities, and groups representing DBEs and prime contractors, almost all commenters supported this proposal as a much-needed program improvement. A group representing women-owned small businesses opposed the proposal,

arguing that suspending a DBE jeopardizes contracts that are a part of the assets of the company and consequently affects the valuation of the DBE. The group also suggested that there be some recognition of estate plans that provide for the child of the disadvantaged owner, who also may be a member of a presumptive group, to take over the firm. In such a case, the commenter posits that the DBE should remain certified if the heir submits an application within six months of the death of the disadvantaged owner. A State department of transportation did not agree that incarceration of the disadvantaged owner should result in an automatic suspension; instead, the State DOT believes the DBE should be removed from the program immediately.

There were several commenters that raised questions or suggested further clarification was needed in certain areas. For example, should the length of the period of incarceration or the reason for the incarceration matter in determining whether the DBE is suspended? Should suspended DBEs be entered in the Department's ineligibility database? A commenter also suggested that a failure to file the annual no change affidavit should not be grounds for summary suspension of a DBE, and recipients should be given more time to consider the DBE's response (60–90 days) before lifting the suspension or commencing decertification proceedings. Similarly, a State DOT suggested the automatic suspension include sale of a firm to a non-disadvantaged owner and when a DBE is under investigation by a recipient for dubious practices on its own contracts. A suspension under these circumstances would prevent the DBE from being listed on other contracts pending review or investigation. One commenter asked that we include a hold harmless provision if no decertification proceeding commenced or results.

DOT Response: The Department is adopting the proposed summary suspension provision. The fundamental premise underlying the summary suspension provision is that when a dramatic change in the operation of the DBE occurs that directly affects the status of the company as a DBE, swift action should be taken to address that situation to preserve the integrity of the program without compromising the procedural protections afforded DBEs to safeguard against action by recipients based on ill-founded or mistaken information. A recipient must have sufficient evidence of facts or circumstances that form the basis for its belief that a suspension of certification is in order. In cases where the recipient learns that a disadvantaged owner whose participation is essential to the continued certification of the firm as a DBE is no longer involved in the company due to incarceration or death, suspending the certification for a short period of time (30 days from the date the DBE receives notice of the suspension) strikes an appropriate balance between program integrity and fairness concerns. It does not matter how long the disadvantaged owner is incarcerated or the reason for the incarceration. What matters is that the company appears to be no longer owned and/or controlled by disadvantaged individuals as determined by the certifying authority. If a recipient determines after hearing from the DBE that the period of incarceration has ended or will end in 30 days, the recipient will lift the suspension (i.e., reinstate the DBE's certification) without initiating removal proceedings. Similarly, when an essential disadvantaged owner dies, his or her heirs who are also members of groups presumed to be disadvantaged are not presumed to be able to demonstrate sufficient ownership or control of the company. DBE certification is not transferable and does not pass to an owner's heirs. A short suspension of the DBE's certification until the heirs submit sufficient evidence to support a continuation of the firms' DBE status seems appropriate. The sooner the evidence of continued eligibility is provided by the DBE, the shorter the period of suspension if the certifying authority agrees that the firm remains eligible.

Under the current rules, disadvantaged owners have an affirmative obligation to notify recipients within 30 days of any material change in circumstances that would affect their continued eligibility to participate in the program and to annually affirm there have been no material changes. The Department does not agree that the authority to suspend one's certification should not be exercised when a DBE fails to abide by these requirements that are essential to ensuring that only eligible DBEs are certified as such and allowed to participate in the program.

Contrary to some of the comments, the summary suspension authority is not and should not be triggered by any violation of DBE program rules by a DBE. The Department also does not believe it appropriate or consistent with fundamental fairness to suspend a DBE while an investigation is pending since it would appear to prejudge the outcome of any investigation, assuming the reasons for the investigation are relevant to DBE program certification. Likewise, automatic decertification assumes that the likelihood or risk of error is small compared to the interest in protecting the integrity of the program such that there is little to be gained from hearing from the DBE to safeguard against inadvertent errors.

Lastly, suspensions are temporary actions taken until more information is obtained from the affected DBE. Consequently, suspensions should not be entered into the Department's ineligibility database, which is reserved for initial certification denial decisions and decertification actions taken by recipients after the DBE has been accorded a full hearing or an opportunity to be heard. We have taken steps to ensure that suspensions do not interfere with the ability of the DBE to continue working on a contract entered into before the suspension took effect. Thus, in this respect, a suspension is accorded the same treatment as the decertification of a DBE that occurs after a DBE has executed a contract. The same rationale applies. The Department is not persuaded that existing contracts that may be considered company assets will be placed in jeopardy if recipients are granted suspension authority.

Certification Appeals 49 CFR 26.89

The Department proposed clarifying amendments to the regulations governing appeals of certification decisions. The amendment would require appellants include in their letter of appeal a statement that specifies why the certification decision is erroneous, identifies the significant facts that were not considered by the certifying agency, or identifies the regulatory provision that was improperly applied. The amendment also would make clear that the Department's decision on appeal is based on the entire administrative record including the letter of appeal. The Department received a handful of comments on this proposed amendment; all of the comments supported the clarifications. The commenters included a State transportation department, a UCP certifying agency, and several individuals and organizations that represent DBEs and ACDBEs.

DOT Response: The Department is finalizing the substance of the proposal with a slight modification to the rule text. The entire administrative record includes the record compiled by the certifying agency from whom the appeal is taken, the letter of appeal from the appellant that contains the arguments for reversing the decision, and any supplemental material made a part of the record by the Department in its

discretion pursuant to 49 CFR 26.89(e). We hope that this minor, technical, clarifying change will dispel the notion that the Department is not to consider any information outside of the record created by the recipient, including the appellant's letter of appeal which necessarily comes after the recipient has created its record. The purpose of the appeal is to provide the appellant an opportunity to point out to the Department, through facts in the record and/or arguments in the appeal letter, why the certifying agency's decision is not ''supported by substantial evidence or inconsistent with the substantive or procedural provisions of [Part 26] concerning certification.'' It is not an opportunity to add new factual information that was not before the certifying agency. However, it is completely within the discretion of the Department whether to supplement the record with additional, relevant information made available to it by the appellant as provided in the existing rule.

Other Provisions

Program Objectives 49 CFR 26.1

In the NPRM, the Department proposed to add to the list of program objectives: Promoting the use of all types of DBEs . This minor technical modification is intended to make clear that application of the DBE program is not limited to construction contracting; the program covers the various kinds of work covered by federally funded contracts let by DOT recipients (e.g., professional services, supplies, etc.). All of the commenters that addressed this modification supported it.

DOT Response: For the reasons expressed in the NPRM, the Department made this change in the final rule.

Definitions

The Department proposed to add six new definitions to the rule for terms used in existing provisions. The words or phrases to be defined for purposes of the DBE program include ''assets;'' ''business, business concern, or business enterprise;'' ''contingent liability;'' ''days;'' ''liabilities;'' and ''transit vehicle manufacturer (TVM).'' We also proposed to modify the existing definition of ''immediate family member,'' ''primary industry classification,'' ''principal place of business,'' and the definitions of ''socially and economically disadvantaged individual,'' and ''Native American'' to be in sync with the U.S. Small Business Administration use of those two terms. We invited comment on whether the definition of TVM should include producers of vehicles to be used for public transportation purposes that receive post-production alterations or retrofitting (e.g., so-called ''cutaway'' vehicles, vans customized for service to people with disabilities). We also wanted to know if the scope of the existing definition of ''immediate family member'' is too broad. It currently includes grandchildren.

Most commenters supported all or some of the proposed definitions. We did not include an actual definition of ''non-disadvantaged individual'' and consequently have not added that term to 49 CFR 26.5. The definitions that generated some opposition or suggested changes were those for TVMs, immediate family member, and Native American. We focus only on these three terms for discussion. One of the few TVMs that provided comments expressed puzzlement over the Department's request for comment on whether producers of ''cutaway'' vehicles should be included in the TVM definition. According to the commenter, such companies, including its company that performs this type of manufacturing work, are indeed TVMs.

One commenter suggested we remove the word ''immediate'' from the term ''family member'' so that recipients may determine on a case-by-case basis whether an individual is considered an immediate family member. Another commenter thought grandparents and in-laws should be excluded, while a different commenter suggested we include ''sons and daughters-in-law.'' We also were asked to include ''live-in significant others'' to recognize domestic partnerships or civil unions. Regarding the definition of Native American, one commenter did not think it should be limited to recognized tribes.

DOT Response: The Department has modified the definition of TVM to include companies that cutaway, retrofit, or customize vehicles to be used for public transportation purposes. We do not think a change to the current approach of specifying in the rule who is considered an ''immediate family member'' in favor of leaving that determination to the certifying agency to decide case-by-case is the right policy choice. However, the Department has decided to modify the existing definition of ''immediate family member'' to keep it in sync with the existing definition of that term in Part 23. The revised definition includes brother-in-law, sister-in-law, or registered domestic partner and civil unions recognized under State law. In addition, we are including a definition for the term ''spouse'' that covers domestic partnerships and civil unions because we agree such relationships should be recognized in the DBE program.

We are finalizing the changes to the definition of Native American to incorporate the requirement that an American Indian be an enrolled member of a federally or State-recognized Indian tribe to make it consistent with the SBA definition. By statute, the term ''socially and economically disadvantaged individuals'' has the meaning given the term in section 8(d) of the Small Business Act and relevant subcontracting regulations issued pursuant to that Act. As explained in the SBA final rule:

> This final rule clarifies that an individual must be an enrolled member of a Federally or State recognized Indian Tribe in order to be considered an American Indian for purposes of the presumptive social disadvantage. This definition is consistent with the majority of other Federal programs defining the term Indian. An individual who is not an enrolled member of a Federally or State recognized Indian Tribe will not receive the presumption of social disadvantage as an American Indian. Nevertheless, if that individual has been identified as an American Indian, he or she may establish his or her individual social disadvantage by a preponderance of the evidence, and be admitted to the [DBE program] on that basis.

(76 FR 8222–01)

Record Keeping Requirements 49 CFR 26.11

The Department proposed to establish record retention requirements for certification related records to ensure that recipients maintain documents needed to conduct certification reviews when necessary. All records documenting a firm's compliance with Part 26 must be retained in accord with the record retention requirements in the recipient's financial assistance agreement. Only six commenters expressed a view about this proposed change. Three of the commenters supported the change, two commenters requested clarification on the kind of records to be retained and for how long, and one commenter was neutral.

DOT Response: The regulatory text of the final rule identifies the minimal records that must be retained. They include the application package for all certified DBEs, affidavits of no change, notices of change, and on-site reviews. Recipients are encouraged to retain any other documents that may be relevant in the event of a compliance review. The uniform administrative rules for Federal grants and cooperative agreements and sub-awards to State, local and Indian tribal governments establish a three-year record retention requirement subject to exceptions set out at 49 CFR 18.42. We

have modified the final rule to include a three year retention period as a default for records other than the minimal records specified in the rule. The 3 year retention period applied to other records may be modified as provided by applicable Federal regulations or the grant agreement, whichever is longer.

DBE Program Requirement

The current rule regarding the application of the DBE program requirement to recipients of the various operating administrations of DOT has been the source of confusion for some. The Department proposed modifications to the rule to eliminate the confusion so that recipients will be clear about their obligation to establish a program and the corresponding obligation to establish an overall DBE participation goal. For FTA and FAA recipients, you must have a DBE program if in any Federal fiscal year the cumulative value of DBE program eligible contracts you will award will exceed $250,000 in Federal funds. In other words, when you add all the eligible Federally funded contracts you expect to award with Federal funds, the aggregate of total Federal funds to be expended will exceed $250,000. For FHWA, the proposed modification makes clear that under FHWA's financial assistance program, its direct, primary recipients must have an approved DBE program plan, and sub-recipients are expected to operate under the primary recipient's FHWA-approved DBE program plans.

Comments generally were supportive of the proposed changes, particularly those related to the FTA and FAA clarification of the $250,000 threshold requirement. Some of the State departments of transportation that commented requested further clarification of the FTA and FAA requirements and had questions about the proposed change applicable to FHWA recipients. For example, a State department of transportation asked that we identify or define what is an eligible contract and that we specify whether the $250,000 threshold applies to the total Federal dollars spent in contracts or the total Federal dollars received in a fiscal year. One commenter also asked that we reconsider requiring subrecipients of FHWA funds operate under the primary recipient's approved DBE program. Lastly, in situations where funding on a project is provided by more than one operating administration, a commenter suggested that the Department specify how that situation will be handled rather than direct recipients to consult the relevant DOT agencies for guidance.

DOT Response: The Department has finalized the proposed revisions. Where more than one operating administration is providing funding for a project or a contract, recipients should consult the OA providing the most funding for the project or contract and the OA, in turn, will coordinate with the DOT agencies involved to determine how to proceed. The final rule applies the $250,000 amount to the total Federal dollars to be expended by an FTA or FAA recipient in contracts funded in whole or in part with Federal assistance during the fiscal year. The rule expressly excludes from this calculation expenditures for transit vehicle purchases.

The following examples illustrate how this provision works:

A. The Hypothetical Area Transit System (HATS) receives $500,000 in FTA assistance. It spends $300,000 of this amount on bus purchases. It is spending $800,000 in local funds plus the remaining $200,000 in FTA funds to build an addition to its bus garage. Because HATS is spending less than $250,000 in FTA funds on contracting, exclusive of transit vehicle purchases, HATS is not responsible for having a DBE program.

B. The Your County Regional Airport receives $400,000 in FAA financial assistance. It uses $100,000 to purchase land and expends $300,000 of the FAA funds for contracts concerning a runway improvement project, as well as $500,000 in local funds. The airport must have a DBE program.

In the first example, even though HATS does not have to have a DBE program, it still must comply with Subpart A requirements of 49 CFR Part 26, such as nondiscrimination (§ 26.7) and assurances (§ 26.13). Compliance with these requirements, like compliance with Title VI of the Civil Rights Act is triggered by the receipt of any amount of DOT financial assistance. In both examples, eligible contracts are federally funded prime contracts.

The requirement that subrecipients of funds from FHWA operate under the direct recipients' approved DBE program is consistent with the way FHWA administers its financial assistance program regarding other Federal requirements imposed as a condition of receiving financial assistance. Through official guidance, the Department describes how subrecipients would administer contract goals on their contracts under the umbrella of the primary recipient's DBE program and overall goals. The continued validity of that guidance is not affected by this rule change.

Overall Goal Setting 49 CFR 26.45

The Department proposed several changes to the regulations governing overall goal setting. They include: (1) Codifying the elements of a bidders list that must be documented and supported when a bidders list is used to establish the base figure for DBE availability under Step One in the goal setting analysis; (2) disallowing the use of prequalification or plan holders lists (and other such lists) as a means of determining the base figure and consider extending the prohibition to bidders lists; (3) establishing a standard for when Step Two adjustments to the base figure should not be made; (4) specifying that in reviewing recipient's overall goal submission, the operating administrations are to be guided by the goal setting principles and best practices identified by the Department; (5) clarifying that project goals may reflect a percentage of the value of the entire project or a percentage of the Federal share; and (6) strengthening and streamlining the public participation requirements for goal setting.

The overwhelming majority of the comments received on the proposed changes to 49 CFR 26.45 were directed at the proposal to disallow use of prequalification lists and other such lists, including the bidders list, to establish the relative availability of DBEs (Step One of the goal setting analysis). Over 100 commenters, many of them general contractors who submitted form letters of objection, representatives of general contractors, and a few State departments of transportation, expressed the view that both prequalification lists and bidders lists are viable data sources for identifying qualified DBEs that are ready, willing, and able to perform on federally funded transportation contracts and that disallowing the use of these data sources would produce unrealistic overall goals that are not narrowly tailored as required by the United States Supreme Court to satisfy constitutional standards. Supporters of the proposal expressed the view that such lists underestimate availability and the true continuing effects of discrimination, represent the most conservative approach, and limit DBE opportunities by restricting consideration of all available DBEs. Other commenters, recognizing the limitations and the benefits of such lists, suggested that the lists should not be the exclusive source of data relied upon to capture the pool of available DBEs. One commenter supported retaining use of the prequalification list but supported getting rid of the bidders list which it

believed is worse than the prequalification list.

Commenters opposed to identifying the elements of a true bidders list (including successful and unsuccessful DBE and non-DBE prime contractors and subcontractors) suggested it might be difficult to compile such a list (i.e., capturing the unsuccessful firms—both DBEs and non-DBEs—bidding or submitting quotes on projects). Despite that concern, of the few commenters that addressed this proposal, most commenters supported it, which reflects the longstanding view of the Department, as set forth in the official tips on goal setting, of what a true bidders list should contain. With regard to the Step Two adjustment, nine of the twelve commenters opposed the change out of a belief that it effectively eliminates adjustments based on past participation by DBEs.

Commenters were almost evenly divided over the proposal to eliminate from the public participation process the requirement that the proposed overall goal be published in general circulation media for a 45-day comment period. Those objecting to this change were mostly representatives of general contractors and some State departments of transportation who viewed this process as more valuable than the stakeholder consultation process. There was universal support among the commenters for posting the proposed and final overall DBE goal on the recipient's Web site.

DOT Response: The Department is retaining the bidders list as one of the approaches recipients may use to establish the annual overall DBE participation goal. To be acceptable, the bidders list must conform to the elements that we finalize in this final rule by capturing the data that identifies the firms that bid or quote on federally assisted contracts. This includes successful and unsuccessful prime contractors, subcontractors, suppliers, truckers, other service providers, etc. that are interested in competing for contracts or work. Recipients that use this method must demonstrate and document to the satisfaction of the concerned operating administration the mechanism used to capture and compile the bidders list. If the bidders list does not capture all available firms that bid or quote, it must be used in combination with other data sources to ensure that it meets the standard in the existing regulations that applies to alternative methods used to derive a base figure for the DBE availability estimate (e.g., it is ''designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.'').

Prequalification lists and other such lists (i.e., plan holders lists) may be used but must be supplemented by other data sources on DBE availability not reflected in the lists. Looking only to prequalified contractors lists or similar lists to determine availability may serve only to perpetuate the effects of discrimination rather than attempt to remediate such discrimination. Thus, to summarize, a recipient may use a bidders list that meets the requirements of the final rule as the sole source in deriving its Step One base figure. However, if its bidders list does not meet these requirements, that list can still be used in determining the overall goal, but must be used in conjunction with other sources. Under no circumstances, though, may a recipient use a prequalification or plan holders list as the sole source used to derive the overall goal.

The purpose of the Step Two analysis in overall goal setting is to consider other available evidence of discrimination or its effects that may impact availability and based on that evidence consider making an appropriate adjustment to derive an overall goal that reflects the level of DBE participation one would expect in the absence of discrimination. The amendment made to the regulations through this final rule does not eliminate the discretion recipients have to make a Step Two adjustment based on past DBE participation or other evidence like econometric data that quantifies the ''but for discrimination'' effects on DBE availability. It recognizes, however, that where there are circumstances that indicate an adjustment is not necessary because, for example, the base figure and the level of past DBE participation are close or the DBE participation level reflects the effects of past or current noncompliance with DBE program regulations, then the evidence would not support making the adjustment. That said, it is incumbent upon recipients to explain to the operating administration why the adjustment is appropriate.

Instead of mandating publication of the proposed overall goal for a 45-day comment period, the Department decided to leave that decision to the discretion of the recipient. The proposal to eliminate this aspect of the existing public participation requirement was designed to reduce the administrative burden, expense, and delay associated with the publication requirement that is borne by recipients and often leads to few, if any, comments (i.e., not much value added). To the extent that some recipients view this as a worthwhile exercise, we see no reason to restrict their ability to allow additional comment through this process. In response to one commenter, we have reduced the comment period from 45 days to 30 days. Those recipients that choose to publish their overall goal for comment, in addition to engaging in the required consultation with stakeholders, must complete their process well before the deadline for submitting the overall goal documentation to the operating administration for review. As stated in the NPRM, the Department believes meaningful consultation with stakeholders is an important, cost-effective means of obtaining relevant information from the public concerning the methodology, data, and analysis that support the overall DBE goal. Once again, all public participation must be completed before the overall goal submission is provided to the operating administration. Failure to complete the publication process by those recipients that choose to conduct such a process should not delay review by the operating administration.

Transit Vehicle Manufacturers 49 CFR 26.49

The Department proposed to clear up confusion that exist about the goal setting and reporting requirements that apply to Transit Vehicle Manufacturers (TVMs). Specifically, the proposed rule clarifies how TVMs are to determine their annual overall DBE goals, when TVMs must report DBE awards and achievements data, and which portion of the DBE regulations apply to TVMs. Under the proposed rule, the goal setting methodology used by TVMs must include all federally funded domestic contracting opportunities made available to non-DBEs, not just those that apply to DBEs, and only the portion of the Federal share of a procurement that is available for contracts to outside firms is to be included. In other words, the DBE goal represents a percentage of the work the TVM will contract to others and not perform in house since work performed in-house is not truly a contracting opportunity available to the DBEs or non-DBEs. The Department sought comment on whether and how the Department should encourage more of the manufacturing process to be opened to DBEs and other small businesses.

With respect to reporting awards and achievements, the Department proposed to require TVMs continuously report their contracting activity in the Uniform Reports of DBE Awards/Commitments and Payments. In addition, the Department removed any doubt that the TVMs are responsible for implementing regulatory requirements similar to DOT

recipients. There is one notable exception: TVMs do not participate in the certification process (i.e., TVMs do not perform certification functions required of recipients and are not required to be a member of a UCP), and post-award requirements need not be followed in those years when a TVM is not awarded or performing as a transit vehicle provider. Lastly, the NPRM included a provision requiring recipients to document that only certified TVMs were allowed to bid and submit the name of the successful bidder consistent with the grant agreement.

Only 12 commenters addressed various aspects of the proposed changes to the TVM provisions. Three recipients supported the proposals as a whole, while others raised questions about the recommended changes and/or questioned existing requirements for which no change was proposed (e.g., suggested requiring the application of TVM provisions to all kinds of highway contracts or opposed the requirement that only certified TVMs are permitted to bid). One commenter rejected specific areas of the proposed changes. There was an additional comment submitted by the owner of a TVM who commented that it needed the services that the DBE program provides, rather than being forced into being a provider of those services.

DOT Response: The Department is confident that the proposed changes will strengthen compliance with TVM provisions and oversight of TVMs by exempting manufacturers from those regulations that are not applicable to this industry. Many of the proposed changes simply clarify the intent and practical application of existing TVM provisions. For example, the existing regulations require compliance, prior to bidding, to confirm a TVM's commitment to the DBE program before it is awarded a federally-assisted vehicle procurement. This is a long-standing requirement. The proposal introduces measures that help ensure pre-bid compliance (e.g., viewing the FTA certified TVM list and submitting the successful bidder to FTA after the award). The proposed changes also confirm that TVM regulatory requirements are nearly identical to that of transit recipients. For this reason, the FTA requires DBE goals from both transit recipients and TVMs as a condition of receiving Federal funds in the case of recipients and as a condition of being authorized to submit a bid or proposal on FTA-assisted transit vehicle procurements, in the case of TVMs.

In order to provide appropriate flexibility in implementing this provision, we must emphasize, to FTA recipients in particular, that overly prescriptive contract specifications on transit vehicle procurements—which, in effect, eliminate opportunities for DBEs in vehicle manufacturing—counter the intent of the DBE program and unduly restrict competition. Moreover, after request for proposals (RFPs) are released, FTA recipients should allow TVMs a reasonable timeframe to submit bids. To do otherwise limits the TVMs' ability to locate and utilize ready, willing, and able DBEs on FTA-assisted vehicle procurements. To lessen any administrative burdens, the FTA will continue posting a list of certified (i.e., compliant) TVMs to the FTA TVM Web page. Recipients may also request verification that a TVM has complied with the regulatory requirement by contacting the appropriate FTA Regional Civil Rights Officer—via email. FTA will respond to this request within 5 business days—via email.

Means Used To Meet Overall Goals 49 CFR 26.51

In the NPRM, we proposed to modify the rule that sets forth examples of what constitutes race-neutral DBE participation to remove as one of the examples ''selection of a DBE subcontractor by a prime contractor that did not consider the DBE's status in making the award (e.g., a prime contractor that uses a strict low-bid system to award subcontracts).'' We explained that it is impossible for recipients to determine if a prime contractor uses a strict low-bid system, and moreover, that such a system conflicts with the good faith efforts guidance in Appendix A that instructs prime contractors not to reject a DBE's quote over a non-DBE quote if the price difference is not unreasonable. Although not stated explicitly in the preamble, the proposed regulatory text made clear that the Department's proposal was simply to eliminate the statement ''*or even if there is a DBE goal,* wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts)'' from the regulatory text (emphasis added). Thus, as proposed, the Department only intended to remove this example for contracts that had a DBE goal.

Commenters, including general contractors and State departments of transportation, overwhelmingly opposed the proposed change for a variety of reasons. General contractors and organizations that represent contractors viewed this proposal as a major policy shift away from the use of race-neutral measures to obtain DBE participation, contrary to existing regulations and relevant court decisions. One commenter actually referred to the proposal as eliminating the use of race and gender means of obtaining DBE participation through the elimination of this one example. One commenter questioned the impact this change would have in those States where DBE contract goals are not established because the overall goal can be meet through race-neutral means alone. Another commenter mistakenly thought the proposed change would not allow DBE participation that exceeds a contract goal to be considered race-neutral participation as currently provided in Departmental guidance. Supporters of the proposal agreed with the explanation provided by the Department.

DOT Response: The Department believes that most of the opposition to this proposal stems from a misunderstanding of what the Department intended to change. The intent of the Department in the NPRM was to remove the proposed example only for contracts that had a DBE goal, not for contracts that were race-neutral. Thus, the Department did not propose nor is finalizing removing the other two examples of race-neutral DBE participation or to remove the third example for race-neutral contracts. The Department understands how the preamble to the NPRM could have led to this confusion, as it was not explicit. Certainly, had the Department proposed to remove, as an example of race-neutral participation, the ''selection of a DBE subcontractor by a prime contractor that did not consider the DBE's status in making the award'' in contracts that had no DBE goals, the Department would have, effectively, been eliminating the very concept of race-neutral participation.

Thus, instead of the drastic change that concerned many commenters, the revised final rule simply removes as an example of race-neutral DBE participation in contracts that have DBE goals the use of a strict low bid system to award subcontracts. The Department continues to believe that it is difficult for recipients to determine if a prime contractor uses a strict low bid system and that use of such a system when contract goals are set runs counter to the Department's good faith effort guidance in Appendix A.

However, this final rule does not mean DBE participation obtained in excess of a contract goal may never be considered race-neutral DBE participation. When DBE participation is obtained as a prime contractor

through customary competitive procurement procedures, is obtained as a subcontractor on a contract without a DBE goal, or is obtained in excess of a contract or project goal, the use of a DBE under those circumstances properly may be characterized as race-neutral DBE participation. This revision to our rule does not represent a policy shift from the existing requirement that recipients meet the maximum feasible portion of the overall goal through the use of race-neutral means of facilitating DBE participation. Indeed, if a recipient is able to meet its overall DBE participation goal without using race-conscious measures (i.e., setting contract goals), the recipient is obligated to do so under the existing regulations. The revision to 49 CFR 26.51(a) does not change that requirement.

Good Faith Efforts To Meet Contract Goals 49 CFR 26.53

Responsiveness vs. Responsibility

The NPRM proposed eliminating the ''responsiveness vs. responsibility'' distinction for when good faith efforts (GFE) documentation, which includes specific information about DBE participation, must be submitted on solicitations with DBE contract goals. The ''responsiveness'' approach requires all bidders or offerors to submit the DBE participation information and other GFE documentation required by 49 CFR 26.53(b)(2) at the time of bid submission. By contrast, the ''responsibility'' approach allows all bidders or offerors to submit the required information at some point before a commitment to perform the contract is made to a particular bidder or offeror (e.g., before contract award). The proposed change to the rule would have removed the current discretion recipients have to choose between the two approaches and require, with one exception, the submission of all information about DBEs that will participate on the contract and the evidence of GFE made to obtain DBE participation on the contract when the bid or offer is presented.

The NPRM also put forward an alternative approach that would allow a short period of time (e.g., 24 hours) after the bid submission deadline during which the apparent successful bidder or offeror would submit its GFE documentation. Under the alternative, the GFE documentation would have to relate to the pre-bid submission efforts; no post-bid efforts would be acceptable. The Department also asked for comment as to whether the one-day period should be extended to three days.

The exception to the across-the-board responsiveness approach or the alternative approach (all of which apply to sealed bid procurements) would be in a negotiated procurement, where in the initial submission the bidders or offerors may make a contractually binding commitment to meet the DBE contract goal and provide specific DBE information and GFE documentation before final selection for the contract is made. Negotiated procurement would include alternate procurement practices such as Design Build procurements in which it is not always possible to commit to specific DBEs at the time of bid submission or contract award.

The Department received many comments on this proposal. The majority of the responses opposing the revisions were submitted by prime contractors, prime contractor associations and some State departments of transportation. Over one hundred form letters of opposition from contractors were received. Those opposing the revision cited the nature of the construction industry and recipient procurement processes as a main reason for opposition. The majority of these comments concentrated on the administrative burden of providing GFE documentation that includes DBE commitments at the time of bid. Commenters stated that because of the nature of bidding on construction contracts, such as hectic timeframes, fixed deadlines, and electronic bidding forms, it was not possible to submit DBE commitments and other GFE documentation at the time of bid. Other reasons given for disapproval included the belief that the proposed rule would limit the use of DBEs on contracts, and it would be difficult for DBEs to negotiate with multiple bidders as opposed to only the identified lowest bidder. In addition, some commenters believed it would not be possible to implement the ''responsiveness'' approach on ''design build projects'' because the design and scope of work for the project is not known at the time of bid.

The Department received comments in favor of the proposal, primarily from minority and women advocacy organizations, regional transit authorities, and some State departments of transportation that already required DBE documentation as a matter of responsiveness. Those in support of the revision primarily stated that the current practice of allowing each recipient to decide whether DBE information should be collected as a matter of responsiveness or responsibility has led to abuses of the DBE program, such as facilitating ''bid shopping'' practices. A member of Congress supported this proposal stating that the current practice of allowing each recipient to decide whether DBE information should be collected as a matter of responsiveness or responsibility has led to abuses of the DBE program, without more specifics.

There were alternatives suggested by some organizations. Most of the suggestions can be grouped into three general categories: (1) Leave the ''responsiveness/responsibility'' distinction as is; (2) allow a short time frame for GFE documentation that includes DBE information to be submitted (1–3 days); and (3) allow a longer time frame for that information to be submitted (3–14 days). Many who opposed eliminating the ''responsive/responsibility'' distinction had less opposition if good faith efforts documentation could be submitted by the apparent low bidder sometime after bid submission. Most opponents expressed a need for a longer timeframe to review the quotes. In addition, general contractor organizations overwhelmingly stated that the good faith efforts documentation should only be submitted by the apparent successful bidder. There were additional comments that opposed the proposal, but they did not offer any suggestions for a different timeframe.

After the Department reopened the comment period in September 2013 and convened a listening session on December 5, 2013, to hear directly from stakeholders about the specific costs and benefits of this proposed regulatory change, general contractors overwhelmingly continued to express strong opposition to the proposal. According to the contractors, the problems presented by the proposal include, among others: (1) A failure of the Department to understand the complexities and challenges of the bidding process; (2) increased burdens placed on the limited resources available to DBEs to develop multiple quotes and engage in time-consuming negotiations before bids are due; (3) adverse impact on the willingness of general contractors to consider new, unfamiliar DBEs because of limited vetting time; (4) increased risk to prime contractors from incomplete or inaccurate DBE quotes likely to result in less DBE participation; (5) a reduction in, or elimination of, second tier subcontracting opportunities for DBEs; and (6) a deterrent to the use of DBEs in creative methods due to concerns about disclosure of confidential, proprietary information. Moreover, the American Road & Transportation Builders Association (ARTBA) and the

Associated General Contractors of America (AGC) challenged the claim of ''bid shopping'' as the basis for the proposed change, demanding a full explanation of the problem (if it exists) and the data relied upon to justify the proposal.

Based on a survey of 300 ARTBA members, 42% of the contractors indicated they would bid on less Federal-aid work if this (and other) proposed change is made permanent; that they would have to increase bid prices to cover additional costs ($25,000–$100,000 per bid); that they would have to add staff; and that the estimated cost of complying annually across the industry is in the range of $2.5 million–$11 billion. Forty-three percent (43%) of the members indicated that DBE plans (i.e., DBE commitments) currently are required by their State departments of transportation at the time of bid; and 37% currently submit good faith efforts documentation with their bid. The AGC acknowledged that some States currently require listing DBEs at the time of bid, but it asserts that those contacted universally responded that the bidding process is costly, burdensome, and results in lower DBE utilization.

The few State departments of transportation that submitted written comments during the reopened comment period supported allowing recipients the flexibility to permit submission of good faith efforts documentation at least 7–10 days after bids are due. Those with electronic bidding systems cited costs associated with modifying those systems to conform to changes in the rules as one more burden straining already limited resources. One State department of transportation supported the proposed change requiring good faith efforts documentation at bid opening.

A few DBEs submitted a form expressing support for the requirement that good faith efforts documentation be submitted with the bid, while others saw the change as creating an unnecessary burden that would tax resources and may result in shutting out DBEs. Before adopting an across-the-board approach, one commenter urged the Department to look carefully at other States that follow the ''responsiveness'' approach to assess whether it creates opportunities or closes doors. Given prime contractor opposition, the commenter thought there should be more of a factual predicate to support this proposed change.

DOT Response: For years the Department has been concerned about claims of ''bid shopping'' engaged in by some prime contractors to the detriment of DBE and non-DBE subcontractors, suppliers, truckers, etc. and the adverse impact it has on the principle of fair competition. The meaning and practice of bid shopping is well understood within the construction industry and among public contracting entities. It occurs when a general contractor discloses the bid price of one subcontractor to a competing subcontractor in an attempt to obtain a lower bid than the one on which the general contractor based its bid to the owner. Variations include ''reverse auctions'' (where the subcontractors compete for the job by lowering prices) and ''bid peddling'' (subcontractors offering to reduce their bid to induce the contractors to substitute the subcontractor after award).

In 1992, when the Department proposed a similar change in the DBE program regulations, it believed then, as it does now, that requiring the submission of good faith efforts documentation that includes DBE information at the time bids are due (as a matter of responsiveness) is a reasonable means of reducing the bid shopping problem. Contrary to the current claims made by general contractors, the Department's interest in revisiting this issue represents neither a ''startling'' change in direction for the DBE program nor a lack of understanding of the procurement process for transportation construction projects. At the same time, the Department acknowledged later in 1997 and 1999 when we finalized that proposed rulemaking, as it does now, that the responsiveness approach may be more difficult administratively for prime contractors and recipients, even though that approach was, and is, being used in some places.

One of the hallmarks of the DBE program is the flexibility afforded recipients to tailor implementation of some aspects of the program to respond to local conditions or circumstances. Indeed, the DBE program regulations cite among the objectives, the desire ''to provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.'' 49 CFR 26.1(g). Flexibility is recognized in many ways: For recipients, overall and contract goals are set based on local conditions, taking into account circumstances specific to a particular recipient or a particular contract; and for prime contractors, they cannot be penalized or denied a contract for failing to meet the goal, as long as documented good faith efforts are made. At what point in the procurement process the good faith efforts documentation must be submitted is yet another example of the flexibility that the Department should not undo without more information.

To the extent that bid shopping exists, it works to the detriment of all subcontractors, DBEs and non-DBEs alike, and drives up the cost of projects to the taxpaying public. However, absent sufficient data regarding the impact of each approach on deterring bid shopping and its effects or data on the costs/benefits of each approach when implemented consistent with the rule, as well as the potential burdens argued by those opposed to the change, the Department is not prepared, at this time, to finalize the proposal to adopt an across-the-board approach. Before taking that step, we think it prudent to examine closely the ''responsiveness'' approach used by many recipients to determine its impact on mitigating bid shopping and on providing greater or lesser opportunities for DBE participation. We intend to undertake such a review which may lead to proposed regulatory action in the future.

While we are retaining the discretion of recipients to choose between a responsiveness or responsibility approach, we think there should be some limit to how long after bid opening bidders or offerors are allowed to submit GFE documentation that includes specific DBE information to reduce the opportunity to bid shop where it exists. This would have the effect of reducing the burden on prime contractors and recipients who use a responsibility approach from the burden allegedly caused by the proposal, while at the same time minimizing opportunities for bid shopping by restricting the amount of time truly needed to gather the necessary information. From the comments, the time period permitted by recipients that use the responsibility approach can run the gamut from 3 to 30 days. These comments present timelines similar to those found in a review the Department recently conducted of the DBE Program Plans for all 50 states, Puerto Rico and the District of Columbia.[1] The results of this analysis are available in the docket for this rulemaking.[2] This analysis shows that: (1) 30 of the State departments of transportation report that they use the responsiveness approach, although the Department notes that some variations on the responsiveness approach—a combination of responsiveness and responsibility—may actually be used by

[1] For purposes of this discussion, Puerto Rico and the District of Columbia are considered ''States,'' thus the totals add up to 52.

[2] See DOT Docket ID Number OST–2012–0147.

some of these recipients; (2) 20 State departments of transportation used the responsibility approach; and (3) two State departments of transportation (Puerto Rico and Florida) have completely race-neutral programs and thus do not set DBE contract goals. Of the 20 responsibility States, 17 States have a set period of time bidders or offerors are given to submit the required information, which ranges from 3 to 15 days, while three States have no set time for all contracts.[3] The results of this review are generally consistent with the survey conducted by ARTBA indicating that 43% of the 300 members responding stated that their State departments of transportation required submission of DBE utilization plans with the bid. We note that the term ''DBE utilization plan'' is not used anywhere in the DBE program regulations.

We think it reasonable ultimately to limit the time to a maximum of 5 calendar days to protect program beneficiaries and overall program integrity.[4] The Department believes 5 calendar days is reasonable because it is more than or equal to the time permitted by five of the responsibility states and, by definition, all of the responsiveness states. Moreover, many of the DOT recipients that commented on establishing a time limit recommended between one (1) to 7 days. Allowing a longer time frame, such as between 7 and 14 days, is too long; it increases opportunities for bid shopping to occur. However, in the final rule we have provided some time for recipients that use this revised responsibility approach to transition to the shorter time frame by January 1, 2017. The transition period is intended to provide time to put in place any necessary system modifications. Until then, recipients will be permitted up to 7 calendar days to require the submission of DBE documentation after bid opening when using a responsibility approach. The Department believes this will allow for a smoother transition to the new approach, while seemingly without encountering the administrative difficulties and added costs pointed to by some of the commenters opposed to the proposed change.

Based on the comments, there is some confusion about how the document requirements of § 26.53(b) apply to design-build contracts. It bears repeating what the Department said in 1999 on this subject, because it remains the case today:

> On design-build contracts, the normal process for setting contract goals does not fit the contract award process well. At the time of the award of the master contract, neither the recipient nor the master contractor knows in detail what the project will look like or exactly what contracting opportunities there will be, let alone the identity of DBEs who may subsequently be involved. In these situations, the recipient may alter the normal process, setting a project goal to which the master contractor commits. Later, when the master contractor is letting subcontracts, it will set contract goals as appropriate, standing in the shoes of the recipient. The recipient will exercise oversight of this process.

(64 FR 5115). The proposed change would not have applied to design-build contracts.

NAICS Codes

The Department proposed changes to the information to be included with bids or offers by requiring the bidders or offerors to provide the recipient with information showing that each DBE signed up by the bidder or offeror is certified in the NAICS code(s) for the kind of work the DBE will be performing. This proposed change was intended to help bidders or offerors identify firms that can qualify for DBE credit in the work area involved in the contract. This information would be submitted with the bidder's or offeror's DBE participation data.

The Department received 26 comments regarding the NAICS codes, 15 against the proposal and nine in favor of it. The comments submitted included State departments of transportation, prime contractors and contractor associations. The opponents of this proposal included mostly prime contractors and contractor associations, and a few State departments of transportation. The opponents' comments focused on a concern that the legal risk associated with including a DBE who could not perform a commercially useful function would fall on the prime contractor, meaning that the prime contractor could be the subject of investigations and charges brought by the DOT Inspector General and others, when it is the certifying agencies that should bear this responsibility. Other comments indicated that adding NAICS codes would not add any value to the process. The proponents of the proposal included advocacy groups and some State departments of transportation. Proponents believe that the NAICS code requirement will add clarification to the process and ensure that the recipient can complete the work.

DOT Response: Under existing regulations, DBEs must be certified in the type of work the firm can perform as described by the most specific available NAICS code for that type of work. Certifiers (i.e., recipients or other agencies that perform the certification function) also may apply a descriptor from a classification scheme of equivalent detail and specificity that reflects the goods and services provided by the DBE (49 CFR 26.71(n)). It is the responsibility of the DBE to provide the certifier with the information needed to make an appropriate NAICS code assignment. In the new certification application form, firms are asked to describe their primary activities and the product(s) or services(s) they provide and to list applicable NAICS codes they seek. If the firm enters into new areas of work since it was first certified, it is the firm's responsibility to provide the certifier the evidence of how they qualify for the new NACIS codes. It is then incumbent upon the certifying agency to determine that the NAICS code to be assigned adequately describes the kind of work the disadvantaged owners have demonstrated they can control and it is the responsibility of the recipient of DOT funds to determine that the DBE's participation on a particular contract can be counted because the DBE is certified to perform the kind of work to be performed on that contract.

The Department has decided to make final this proposed rule change. In doing so, the Department does not intend to shift responsibility for the accuracy of NAICS code assignments from the certifier to the contractor. When a DBE submits a bid to a recipient as a prime contractor or a quote to a general contractor as a subcontractor, it is the responsibility of the DBE to ensure that the bid or quote shows that the NAICS code in which the DBE is certified corresponds to the work to be performed by the DBE on that contract. It would be in the best interest of the contractor to also have this information when it is considering DBEs interested in competing for contract opportunities where a contract goal has been set. This enables the contractor to make a reasonable determination whether it has made good faith efforts to meet the goal through the DBEs listed. Ultimately, the recipient is responsible for ensuring the DBE is certified to do the kind of work covered by the contract before DBE participation can be counted. Including this information in the bid documents should assist all parties concerned in

[3] Under 49 CFR 26.53(c), all GFE documentation must be submitted before committing to the performance of the contract by the bidder or offeror (i.e., before contract award).

[4] Due to the definition of ''days'' adopted in this final rule, bidders or offerors will have 5 calendar days (i.e., not business days) to submit the necessary information. Thus, if a bid is submitted on Thursday, the apparent low bidder would have until Tuesday to submit the information.

complying with DBE program requirements. Thus, it is the responsibility of the certifier to ensure that DBEs are certified only in the appropriate NAICS codes; it is the responsibility of the DBE to provide that NAICS code to the prime while the prime is putting together a bid; and it is the responsibility of the prime to provide those codes to the recipient when providing the other DBE information. It is not the responsibility of the prime to vouch for the accuracy of that certification.

Replacement of a DBE

The NPRM proposed that in the event that it is necessary to replace a DBE listed on a contract, a contractor must document the GFE taken to obtain a replacement and may be required to take specific steps to demonstrate GFE. The specific steps would include: (1) A statement of efforts made to negotiate with DBEs for specific work or supplies, including the names, address, telephone numbers, and emails of those DBEs that were contacted; (2) the time and date each DBE was contacted; (3) a description of the information provided to DBEs regarding the plans and specifications for portions of the work to be performed or the materials supplied; and (4) an explanation of why an agreement between the prime contractor and a DBE was not reached. The prime contractor would have to submit this information within 7 days of the recipient's agreement to permit the original DBE to be replaced, and the recipient must provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated. Failure to comply with the GFE requirements in the rule would constitute a material breach of contract, subject to termination and other remedies provided in the contract.

Twenty-eight commenters opposed this modification to the rules. They included prime contractors, State departments of transportation, and contractor associations. Essentially, the opponents were of the view that prime contractors should not be responsible for looking beyond the original commitment for DBE replacements. Others felt that the 7 day timeframe to replace a DBE is not long enough. Some opponents suggested changing the proposal so that it is desirable to replace a DBE with a DBE, but not mandatory. Some prime contractors also stated that there is a need to be compensated for the delays to replace a DBE. Those in favor of the proposal included five commenters representing State departments of transportation, transit authorities, and DBE advocacy groups. These commenters felt that contractors should make efforts to replace a DBE and failure to carry out the requirement to do so is a breach of contract.

DOT Response: When the Department amended the regulations in 2011 (the first phase of its recent focus on program improvements), we required prime contractors that terminate DBEs make GFE to find a replacement to perform at least the same amount of work under the contract to meet the contract goal established for the procurement. Thus, this GFE obligation currently exists and is not new. We agree that the GFE guidance in Appendix A used by recipients to assess the efforts made by bidders and offerors before contract award can also be used to evaluate efforts made by the contractor to replace a DBE after contract award. There is no need to separately identify steps that a recipient may require when a contractor is replacing a DBE. However, there is nothing that prevents a contractor from taking any of the steps included in the proposed amendment to the rules. Indeed, recipients may consider, as part of their evaluation of the efforts made by the contractor, whether DBEs were notified of subcontracting opportunities, whether new items of work were made available for subcontracting, what information was made available to DBEs, and what efforts were made to negotiate with DBEs.

The GFEs made by the contractor to obtain a replacement DBE should be documented and submitted to the recipient within a reasonable time after obtaining approval to terminate an existing DBE. To avoid needless delay and ensure timely action, we think 7 days is reasonable, but we have modified the rule to allow recipients to extend the time if necessary at the request of the contractor.

The existing regulations currently require a contract clause be included in prime contracts and subcontracts that make the failure by the contractor to carry out applicable requirements of 49 CFR Part 26 a material breach of contract, which may result in the termination of the contract or such other remedy as the recipient deems appropriate. See 49 CFR 26.13(b). Consequently, a contractor that fails to comply with the requirements for terminating or replacing a DBE would be in breach of contract, subject to contract sanctions that include termination of the contract. We need not replicate the provisions of § 26.13. We also will not prescribe what the appropriate contract sanctions or administrative remedies must be. However, we have revised § 26.13 to incorporate the list of remedies we proposed as other possible contract remedies recipients should consider. Many of the suggestions are sanctions currently used by some recipients. They include withholding progress payments, liquidated damages, disqualifying the contractor from future bidding, and assessing monetary penalties.

Copies of Quotes and Subcontracts

The Department proposed to require the apparent successful bidder/offeror, as part of its GFE documentation, provide copies of each DBE and non-DBE subcontractor quote it received in situations where the bidder/offeror selected a non-DBE firm to do work sought by a DBE. This information would help the recipient determine whether there is validity to any claims by a bidder/offeror that a DBE was rejected because its quote was too high. The contractor who is awarded the contract also would be required to submit copies of all DBE subcontracts.

There were 15 organizations that commented on the proposal regarding quotes and 19 commenters on the proposal regarding subcontracts. Commenters were almost evenly divided in their support for, or opposition to, requiring the submission of quotes under the limited circumstances set out in the proposed rule. A State department of transportation noted that the submission of quotes was already being implemented in its program. One supporter suggested this requirement should apply only when the DBE contract goal is not met. Opponents raised concerns about the burden imposed and questioned the benefit to be derived since the comparison of quotes is not viewed as a useful exercise. Regarding the submission of subcontracts, the commenters overwhelming opposed making this a requirement because of the burden. One commenter suggested that the proposal appears to duplicate an existing requirement of the Federal Highway Administration (FHWA) and another commenter questioned the steps that would be taken to protect confidential or proprietary information.

DOT Response: The GFE guidance in Appendix A, in its current form, instructs prime contractors to consider a number of factors when negotiating with a DBE and states that 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. Thus, the reasonableness of a DBE's quote as compared to a non-DBE's quote is often

an issue cited by a prime contractor in selecting a non-DBE over a DBE. The Department believes that requiring a bidder/offeror to provide, as part of the GFE documentation, subcontractor quotes received by the bidder/offeror in those instances where a DBE's quote was rejected over a non-DBE's quote will assist recipients in determining the validity of claims made by the bidder/offeror that the DBE's quote was too high or unreasonable and has therefore decided to finalize this proposal. Further, we stress that only the quote would need to be submitted in these situations, not any additional information and only in instances where a non-DBE was selected over a DBE, thus limiting the burden of this requirement.

The Department recognizes that requiring the submission of DBE subcontracts may pose unnecessary burdens on contractors and recipients. Thus, the Department has decided to modify its proposal to only require that DBE subcontracts be made available to recipients upon request when needed to ensure compliance with the requirements of 49 CFR Part 26.

Good Faith Efforts Applied to Race-Neutral DBE Participation

We sought comment on whether some of the good faith efforts provisions of the rule concerning contracts with DBE goals should apply to DBEs on contracts that do not have a DBE goal. For example, the rules that restrict termination of DBEs and that impose good faith efforts obligations to replace DBEs that are dropped from a contract or project would apply regardless of whether the DBE's participation resulted from race-conscious or race-neutral measures.

Of the 28 commenters that responded to this question, only 3 expressed support and all three supporters were DBEs or organizations representing DBEs. Three commenters also were conflicted, unsure of whether the proposal would result in benefits to DBEs. The general contracting community, many State departments of transportation, and some transit agencies expressed opposition because they believe DBEs should be treated no different than non-DBEs on contracts with no DBE goals (the primary means of obtaining measurable DBE participation through race- and gender-neutral measures), and to do otherwise is to essentially convert what began as race-neutral conduct into race-conscious conduct.

DOT Response: The Department agrees with the points raised by the commenters opposing this change (specifically, that no distinction should be made between DBEs and non-DBEs when race-neutral measures are used to obtain participation) and has decided to maintain the status quo. The restrictions on terminating and replacing a DBE selected by a bidder or offeror to meet a contract goal are intended to hold the contractor to the good faith efforts commitment made to win the contract. No comparable commitment is made when DBE contract goals are not set.

Trucking 49 CFR 26.55(d)

The Department proposed to change the counting rule for trucking to allow 100% of a DBE's trucking services to be counted when the DBE uses its own employees as drivers but leases trucks from a non-DBE truck leasing company. This proposed change gives DBEs the same ability as non-DBEs to use their own drivers and supplement their fleets with leased trucks without sacrificing any loss of DBE credit because the trucks may be leased from a non-DBE leasing company. Consistent with the current prohibition on counting materials, supplies, equipment, etc., obtained from the prime contractor or its affiliates (49 CFR 26.55(a)(1)), trucks leased from the prime contractor would not be counted. As noted in the NPRM, this proposed rule change applies to counting only; it would not immunize companies from scrutiny due to potentially improper relationships between DBEs and non-DBEs that raise certification eligibility or fraud concerns.

More than 25 comments were received on this proposed change, mostly in favor of the modification. There were several commenters that believed the proposed rule would invite more fraud for an area that is one of the top means of obtaining DBE participation on Federal-aid contracts. Additional comments included expanding the definition of ''employees'' to expressly include those drivers that are hired by DBEs from the union hall on an as-needed basis to fulfill contracts, clarifying what constitutes ownership of trucks, eliminating the current option allowed under the rule that permits credit for trucks and drivers leased from non-DBEs, eliminating the need to obtain written consent from the operating administrations on the option chosen by the recipient; and reinforcing the restriction on not allowing a DBE to count trucks purchased or leased from the prime contractor.

DOT Response: The Department did not propose any changes in the NPRM to the existing rule that allows a DBE that leases trucks (and also leases the drivers) from a non-DBE firm to receive credit for the value of transportation services provided by the non-DBE firm up to the amount of credit provided by trucks owned by DBEs that are used on the contract. This option was added to the DBE program rules in 2003 (68 Fed. Reg. 35542–02) to recognize the practical reality of leasing in the trucking business and to respond to concerns about reduced opportunities for DBEs caused by the 1999 version of the counting rule. As indicated in the 2003 final rule, a recipient may choose the one-for-one option to credit trucks and drivers leased from non-DBEs or it may limit credit to fees and commissions for work done with non-DBE lessees, consistent with the 1999 version of the rule. If a recipient chooses to count the use of trucks and drivers leased from a non-DBE firm, as provided in the existing rule, the recipient's choice should be reflected in the recipient's DBE program plan, which is subject to approval by the cognizant operating administration (OA) to ensure appropriate safeguards are taken by the recipient to prevent fraud. Contrary to the way some commenters are reading the existing rule, it does not contemplate obtaining OA consent on a transaction-by-transaction basis.

The modification to the rule that the Department makes final today simply clarifies that trucks that are leased by a DBE from a non-DBE for use by the DBE's employees should be treated no differently than other equipment a DBE may lease to conduct its business. The value of the transportation services provided by the DBE would not be adversely impacted by the fact that the equipment used by the DBE's employees is leased instead of owned. This is consistent with the existing counting rule and with the basic principle that DBE participation should be counted for work performed with a DBE firm's own forces. The term ''employee'' is to be given its commonly understood dictionary meaning, and ''ownership'' includes the purchase of a truck or trucks through conventional financing arrangements.

Regular Dealer 49 CFR 26.55(e)

The Department proposed to codify guidance issued in 2011 on how to treat the services provided by a DBE acting as a regular dealer or a transaction expediter/broker for counting purposes (i.e., crediting the work of the DBE toward the goal). The guidance makes clear that counting decisions involving a DBE acting as a regular dealer are made on a contract-by-contract basis and not based on a general description or designation of a DBE as a regular

dealer. The Department also invited an open discussion of the regular dealer concept in light of changes in the way business is conducted. Specifically, we sought comment on: (1) How, if at all, changes in the way business is conducted should result in changes in the way DBE credit is counted in supply situations?; (2) what is the appropriate measure of the value added by a DBE that does not play a traditional regular dealer/middleman role in a transaction?; and (3) do the policy considerations for the current 60% regular dealer credit actually influence more use of DBEs as contractors that receive 100% credit?

The Department received over 50 comments from prime contractors, DBEs, and recipients, many of which emphasized the need for additional clarification of, or changes to, the terminology used to describe regular dealers, middlemen, transaction expediters, and brokers. The comments were evenly divided over whether the guidance should be codified in the regulations. Those in support agreed that the determination of whether or not a DBE is functioning as a regular dealer as defined in the existing rule should be based on the role performed by the DBE on the contract, which may vary from contract to contract. Those opposed to the contract-by-contract approach, represented mostly, but not exclusively, by prime contractors, argued that the approach reflected in the guidance is burdensome and that once a recipient determines at certification that a DBE is a supplier, a wholesaler, a manufacturer, a transaction expediter, a middleman, or a broker, the credit allowed under the rules should be applied. To do otherwise creates inconsistency, uncertainty, and exposes the prime and the DBE to risks associated with fraud investigations in this area. It is the responsibility of the certifier, they argue, to ensure that a DBE certified as a supplier, for example (and thereby acting as a regular dealer), is, in fact, a supplier and not a transaction expediter. Indeed, several commenters expressed the view that certifiers should be allowed to certify a DBE as a ''regular dealer.'' Followed to its logical conclusion, once certified, how the work to be performed by the DBE is counted would be automatic without regard to what the DBE is actually doing on the contract.

Many comments addressed the changing business environment where the best method of delivering supplies ordered from a non-DBE manufacturer may in fact be drop-ship rather than delivery by the DBE regular dealer using its own trucks. One commenter stated that the requirement that a DBE own and operate its own distribution equipment directly conflicts with industry practice and creates a greater burden and challenge to DBEs. Similarly, some maintain the requirement for an inventory or store front is outdated. The way business is conducted today, they argue, services provided by wholesalers or e-Commerce businesses do not require an inventory or a store open to the public. Several commenters indicated that they would be comfortable with the elimination of the distinct categories and only have a single distinction of a goods supplier from a non-DBE manufacturer with a set percentage of dollars that could be counted or only using fees and commissions as the amount that can be counted as done currently for transaction expediters and brokers. To encourage greater use of DBE contractors to meet contract goals, one commenter suggested placing a cap (e.g., no more than 50%) on how much of a contract goal could be met using DBE suppliers.

There were suggestions that the Department eliminate altogether regular dealers and brokers from the rule. Others countered that any proposal to eliminate counting regular dealer participation toward contract goals would severely reduce the pool of ready, willing, and able DBEs given how often the regular dealer credit is used to meet contract goals; such a proposal, they maintain, should result in a corresponding reduction in goals. Other commenters believe that it is important to keep the regular dealer concept and consider increasing the counting percentage due to the value added services they provide. Still others thought a complete overhaul of the regular dealer provisions in the rule is needed to recognize decades of changes in the construction industry, and no modifications to the rule should be made until further analysis is done.

DOT Response: The Department has decided to codify the guidance on the treatment of counting decisions that involve DBEs functioning as regular dealers. This guidance is consistent with the basic counting principles set out in the rule that apply regardless of the kind of work performed by the DBE. Specifically, the counting rules apply to a specific contract in which a DBE participates based on the value of work actually performed by the DBE that involves a commercially useful function on that contract. Throughout 49 CFR 26.55 there are numerous references to ''a contract,'' ''the contract,'' or ''that contract.'' In other words, counting is by definition a ''contract-by-contract'' determination made by recipients after evaluating the work to be performed by the DBE on a particular contract.

The Department appreciates the thought that went into the varied comments received on the questions we posed and the overall interest in the subject. In the context of this discussion, it is important to reiterate that certification and counting are separate concepts in the DBE rule. This applies regardless of the type of work the DBE is certified to perform. It is also important to note that DBEs must be certified in the most specific NAICS code(s) for the type of work they perform and that there is no regular dealer NAICS code. Regular dealer is a term of art used in the context of the DBE program. That said, the Department believes that more analysis and discussion is needed to make informed policy decisions about appropriate modifications to the regulations governing regular dealers, transaction expediters, and brokers. We think it more appropriate at this point to develop additional guidance to address different business scenarios rather than promulgate regulatory requirements or restrictions beyond those that currently exist. We will continue the conversation through future stakeholder meetings.

Ethics and Conflicts of Interest

The Department sought comment on whether Part 26 should be amended (or guidance issued) to add provisions concerning ethics and conflicts of interest to help play a constructive role in empowering DBE officials in resisting inappropriate political pressures. At the same time, the Department questioned whether such a provision would be effectual and whether the provision could be drafted so as not to be overly detailed. The Department also welcomed suggestions about ethics and conflicts of interest.

Less than 25 commenters elected to address this subject; the significant majority of commenters expressed support for adding ethics and conflict of interest provisions to enable DBE certification officials and others to resist inappropriate pressures. An advocacy group commended the Department for initiating a discussion about ethics. A State transportation department suggested including applicable penalties and offering protection via the Whistleblower Protection Act. An airport sponsor supported adding provisions that clarify the roles of staff who administer the selection process.

A State transit authority did not believe that effective guidance could be provided in the regulation without being overly detailed and burdensome. Moreover, the commenter recognized

that while adding such provisions would play a constructive role, they would not totally eradicate inappropriate pressure. A State transportation department directed the Department to professional codes of conduct for the fields of law and engineering as examples. An advocacy group and a DBE noted that a code of ethics might provide recipients with a ''safety net'' when responding to undue pressure. Another State transportation department supports the provision if DOT takes quick action against known abusers of ethics. A DBE commenter recommended a workgroup approach be utilized to prepare draft language.

DOT Response: There was general support among the commenters for establishing a code of ethics of some kind to insulate or protect DBE program administrators from undue pressure to take actions inconsistent with the intent and language of the DBE program rules. However, very few of the commenters made suggestions on the details of such a code or on the kind of provisions that might be added to address specific concerns. As indicated in the NPRM, recipients and their staffs are subject to State and local codes of ethics that govern public employees and officials in the performance of their official duties and responsibilities, including the responsibilities they carry out in administering the DBE program as a condition of receiving Federal financial assistance. Of course, grant recipients are subject to the common grant rules which prohibit participating in the selection, award, or administration of a contract supported by Federal funds if a conflict of interest would be involved. Because we lack sufficient information, at this point, to determine the extent to which widespread problems exist or how best to approach the issue—through regulations or guidance—the Department thinks it best to hold off on adopting ethics rules for the DBE program to supplement existing State and local ethics codes. Instead, the Department may engage stakeholders in a further discussion to aid in identifying appropriate next steps.

Appendix A—Good Faith Efforts Guidance

The Department proposed several revisions to Appendix A to Part 26—Guidance Concerning Good Faith Efforts to clarify and reinforce the GFE obligation of bidders/offerors and to provide additional guidance to recipients. We proposed to add more examples of the types of actions recipients may consider when evaluating the bidders'/offerors' GFE to obtain DBE participation. The proposed examples included conducting market research to identify small business contractors and suppliers and establishing flexible timeframes for performance and delivery schedules that encourage and facilitate DBE participation. We reinforced concepts that we have emphasized in communicating with recipients over the years: Namely, that a contractor's desire to perform work with its own forces is not a basis for not making GFE and rejecting a replacement DBE that submits a reasonable quote; and reviewing the performance of other bidders should be a part of the GFE evaluation. The Department also proposed to add language specifying that the rejection of a DBE simply because it was not the low bidder is not a practice considered to be a good faith effort.

There were 25 comments collected that opposed the suggestion that flexible timeframes and schedules be established to facilitate DBE participation. The comments received were submitted by prime contractors, contractor associations, and State departments of transportation. These organizations stated that a ''flexible timeframe'' was unrealistic and went against the nature of the construction industry. Other organizations stated the need to further quantify what constitutes an ''unreasonable quote'' when making GFE to replace a DBE. There were two organizations that supported these provisions. U.S. Representative Judy Chu agreed that there can be no definitive checklist, but suggested that best practices be collected and disseminated to clarify the issue. One State department of transportation agreed that the bidder cannot reject a DBE simply due to price.

In the NPRM, we also proposed in Appendix A that DOT operating administrations may change recipients' good faith efforts decisions. There were a few comments regarding this proposal, all in opposition. The commenters included a DBE, prime contractor, a State department of transportation, and a contractors association. The prime contractor noted that operating administrations should be involved throughout the good faith efforts review process and not after the recipient has made a decision. There were no comments in support of this proposal.

DOT Response: It is important to reiterate and reinforce that Appendix A is guidance to be used by recipients in considering the good faith efforts of bidders/offerors. It does not constitute a mandatory, exclusive, or exhaustive checklist. Rather, a good faith efforts evaluation looks at the ''quality, quantity, and intensity of the different kinds of efforts that the bidder has made.'' The proposed revisions to the guidance made by the Department are based on experience gained since the development of the guidance in 1999 and are intended to incorporate clarifications and additional examples of the different kinds of activities to consider. We have modified the final guidance in keeping with the existing purpose and intent. The guidance also seeks to indicate what reasonably may not be viewed as a demonstration of good faith efforts. In this regard, rejecting a DBE only because it was not the low bidder is not consistent with the longstanding idea that a bidder/offeror should consider a variety of factors when negotiating with a DBE, including the fact that there may be additional costs involved in finding and using DBEs, as currently stated in the existing guidance. Similarly, the inability to find a replacement DBE at the original price is not, without more, sufficient to demonstrate GFE were made to replace the original DBE. As currently stated under the existing guidance, a firm's price is one of many factors to consider in negotiating in good faith with interested DBEs.

The Department has decided to make no change to the current role of the operating administrations with respect to the GFE determinations made by recipients. It is the responsibility of recipients to administer the DBE program consistent with the requirements of 49 CFR Part 26, and it is the responsibility of the operating administrations to oversee recipients' program administration to ensure compliance through appropriate enforcement action if necessary. Such action includes refusing to approve or provide funding for a contract awarded in violation of 49 CFR 26.53(a). The proposed change may confuse the relative roles and responsibilities of the recipients and the operating administrations and consequently has been removed from the final rule.

Technical Corrections

The Department is amending the following provisions in 49 CFR Part 26 to correct technical errors:

1. Section 26.3(a)—Include a reference to the Highway and Transit funds authorized under SAFETEA–LU and MAP–21.

2. Section 26.83(c)(7)—Remove the reference to the DOT/SBA MOU since the MOU has lapsed.

3. Section 26.89(a)—Amend to recognize that the DOT/SBA MOU has lapsed.

Regulatory Analyses and Notices

Executive Orders 12866 and 13563 (Regulatory Planning and Review)

This final rule is not a ''significant regulatory action'' under section 3(f) of Executive Order 12866, Regulatory Planning and Review, and does not require an assessment of potential costs and benefits under section 6(a)(3) of the Order. It does not create significant cost burdens, does not affect the economy adversely, does not interfere or cause a serious inconsistency with any action or plan of another agency, does not materially alter the impact of entitlements, grants, user fees or loan programs; and does not raise novel legal or policy issues. The final rule is essentially a streamlining of the provisions for implementing an existing program, clarifying existing provisions and improving existing forms. To the extent that clearer certification requirements and improved documentation can forestall DBE fraud, the rule will result in significant savings to State and local governments. This final rule does not contain significant policy-level initiatives, but rather focuses on administrative changes to improve program implementation. The Department notes that several commenters, particularly general contractors and their representatives, argued that the NPRM should have been designated as ''significant.'' Although the Department continues to believe that the designation of the NPRM was correct based on the intent of this rulemaking, we note that, as discussed above, we have decided to not finalize at this time many of the provisions that those commenters argued were significant changes to the DBE program.

Executive Order 12372 (Intergovernmental Review)

The final rule is a product of a process, going back to 2007, of stakeholder meetings and written comment that generated significant input from State and local officials and agencies involved with the DBE program in transit, highway, and airport programs.

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601–612), we have evaluated the effects of this final rule on small entities and anticipate that this action will not have a significant economic impact on a substantial number of small entities. The underlying DBE rule does deal with small entities: All DBEs are, by definition, small businesses. Also, some FAA and FTA recipients that implement the program are small entities. However, the changes to the rule are primarily technical modifications to existing requirements (e.g., improved forms, refinements of certification provisions) that will have little to no economic impact on program participants. Therefore, the changes will not create significant economic effects on anyone. In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), I certify that this rule will not have a significant economic impact on a substantial number of small entities.

Executive Order 13132 (Federalism)

A rule has implications for federalism under Executive Order 13132, Federalism, if it has a substantial direct effect on State or local governments and would either preempt State law or impose a substantial direct cost of compliance on them. As noted above, there is no substantial compliance cost imposed on State and local agencies, who will continue to implement the underlying program with administrative improvements proposed in the rule. The proposed rule does not involve preemption of State law. Consequently, we have analyzed this proposed rule under the Order and have determined that it does not have implications for federalism.

National Environmental Policy Act (NEPA)

The Department has analyzed the environmental impacts of this proposed action pursuant to the National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.) and has determined that it is categorically excluded pursuant to DOT Order 5610.1C, Procedures for Considering Environmental Impacts (44 FR 56420, Oct. 1, 1979). Categorical exclusions are actions identified in an agency's NEPA implementing procedures that do not normally have a significant impact on the environment and therefore do not require either an environmental assessment (EA) or environmental impact statement (EIS). See 40 CFR 1508.4. In analyzing the applicability of a categorical exclusion, the agency must also consider whether extraordinary circumstances are present that would warrant the preparation of an EA or EIS. *Id.* Paragraph 3.c.5 of DOT Order 5610.1C incorporates by reference the categorical exclusions for all DOT Operating Administrations. This action is covered by the categorical exclusion listed in the Federal Highway Administration's implementing procedures, ''[p]romulgation of rules, regulations, and directives.'' 23 CFR 771.117(c)(20). The purpose of this rulemaking is to make technical improvements to the Department's DBE program, including modifications to the forms used by program and certification-related changes. While this rule has implications for eligibility for the program—and therefore may change who is eligible for participation in the DBE program—it does not change the underlying programs and projects being carried out with DOT funds. Those programs and projects remain subject to separate environmental review requirements, including review under NEPA. The Department does not anticipate any environmental impacts, and there are no extraordinary circumstances present in connection with this rulemaking.

Paperwork Reduction Act

According to the 1995 amendments to the Paperwork Reduction Act (5 CFR 1320.8(b)(2)(vi)), an agency may not collect or sponsor the collection of information, nor may it impose an information collection requirement unless it displays a currently valid Office of Management and Budget (OMB) control number. This action contains additional amendments to the existing information collection requirements previously approved under OMB Control Number 2105–0510. As required by the Paperwork Reduction Act, the Department has submitted these information collection amendments to OMB for its review. The Department will announce the finalization of this information collection request in a separate **Federal Register** notice following OMB approval. The NPRM contained estimates of the burden associated with the additional collection requirements proposed in that document. Various commenters stated that the Department understated the proposed burden for the collections associated with the application form and personal net worth form. As discussed above in the relevant portions of the preamble, the Department is sensitive to those concerns and has revised those collections to minimize what information must be submitted and to simplify other aspects of the forms. For each of these information collections, the title, a description of the entity to which it applies, and an estimate of the annual recordkeeping and periodic reporting burden are set forth below.

1. Application Form

Today's final rule modifies the application form for the DBE program. In the NPRM, the Department explained that its estimate of 8 total burden hours per applicant to complete its DBE or

ACDBE certification application with supporting documentation was based on discussions the Department has had with DBEs in the past. The comments and the Department's response to those comments are discussed above in the preamble.

The number of new applications received each year by Unified Certification Program members is difficult to estimate. There is no central repository for DBE certification applications and we predict that the frequency of submissions at times vary according to construction season (high applications when the season is over), the contracting opportunities available in the marketplace, and the number of new transportation-related business formations or expansions. To get some estimate however, the Department contacted recipients during the process of developing the NPRM. The agencies we contacted reported receiving between 1–2 applications per month, 5–10 per month, or on the high end 80–100 per month. There are likely several reasons for the variance. Jurisdictions that are geographically contiguous to other states (such as Maryland) and/or have a high DBE applicant pool may receive a higher number whereas jurisdictions in remote areas of the country with smaller numbers of firms may have lower applicant requests for DBE certification. These rough numbers likely do not include requests for expansion of work categories from existing firms that are already certified.

Frequency: Once during initial DBE or ACDBE certification.

Estimated Average Burden per Response: 8 hours.

Number of Respondents: 9,000–9,500 applicants each year.

Estimated Total Annual Burden Hours: 72,000–76,000 hours per year.

2. PNW Form

A small business seeking to participate in the DBE and ACDBE programs must be owned and controlled by a socially and economically disadvantaged individual. When a recipient determines that an individual's net worth exceeds $1.32 million, the individual's presumption of economic disadvantage is said to have been conclusively rebutted. In order to make this determination, the current rule requires recipients to obtain a signed and notarized statement of personal net worth from all persons who claim to own and control a firm applying for DBE or ACDBE certification and whose ownership and control are relied upon for the certification. These personal net worth statements must be accompanied by appropriate supporting documentation (e.g., tax returns). The form finalized in this rule would replace use of an SBA form suggested in current regulations.

As discussed above in the preamble, we estimate that compiling information for and filling out this form would take approximately 2 hours, slightly longer than that for the SBA form currently in use. As explained in further detail in the above preamble, the Department has chosen not to finalize its proposal to require a PNW form with each annual affidavit of no change. Thus, the number of respondents who must submit a PNW form is the same as the number of applications.

Frequency: Once during initial DBE certification. For the DBE/ACDBE programs, information regarding the assets and liabilities of individual owners is necessary for recipients of grants from the Federal Transit Administration, the Federal Aviation Administration, and the Federal Highway Administration, to make responsible decisions concerning an applicant's economic disadvantage under the rule. All persons who claim to own and control a firm applying for DBE or ACDBE certification and whose ownership and control are relied upon for the certification will complete the form.

Estimated Average Burden per Response: 2 hours.

Number of Respondents: 9,000–9,500 applicants each year.

Estimated Burden: 18,000–19,000 hours per year for applications.

3. Material With Annual Affidavits of No Change

Each year, a certified firm must submit an affidavit of no change. Although the Department proposed that DBE would need to submit various additional documentation with the affidavit (e.g., an updated PNW statement and records of transfers) today's final rule only requires that the owner and the firm's (including affiliates) most recent completed IRS tax return, IRS Form 4506 (Request for Copy or Transcript of Tax Return) be submitted with the affidavit. Collection and submission of these items during the annual affidavit is estimated to take approximately 1.5 hours.

Estimated Average Burden per Response: 1.5 hours.

Respondents: The approximately 30,000 certified DBE firms.

Burden: Approximately 45,000 hours per year.

4. Reporting Requirement for Percentages of DBEs in Various Categories

The final rule implements a statutory requirement calling on UCPs to annually report the percentages of white women, minority men, and minority women who control DBE firms. To carry out this requirement, the 52 UCPs would read their existing Directories, noting which firms fell into each of these three categories. The UCPs would then calculate the percentages and email their results to the Departmental Office of Civil Rights. It would take each UCP an estimated 3 hours to comb through their Directories, and another three minutes to calculate the percentages and send an email to *DBE@DOT.GOV*.

Estimated Average Burden per Response: 3 hours, 3 minutes.

Respondents: 52.

Burden: Approximately 158.5 hours.

5. Uniform Report of DBE Commitments/Awards and Payments

As part of this rulemaking, the Department is reinstating the information collection entitled, ''Uniform Report of DBE Commitments/Awards and Payments,'' OMB Control No. 2105–0510, consistent with the changes proposed in this final rule. This collection requires that DOT Form 4630 be submitted once or twice per year by each recipient having an approved DBE program. The report form is collected from recipients by FHWA, FTA, and FAA, and is used to enable DOT to conduct program oversight of recipients' DBE programs and to identify trends or problem areas in the program. This collection is necessary for the Department to carry out its oversight responsibilities of the DBE program, since it allows the Department to obtain information from the recipients about the DBE participation they obtain in their programs.

In this final rule, the Department modified certain aspects of this collection in response to issues raised by stakeholders: (1) Creating separate forms for routine DBE reporting and for transit vehicle manufacturers (TVMs) and mega projects; (2) amending and clarifying the report's instructions to better explain how to fill out the forms; and (3) changing the forms to better capture the desired DBE data on a more continuous basis, which should also assist with recipients' post-award oversight responsibilities.

Frequency: Once or twice per year.

Estimated Average Burden per Response: 5 hours per response.

Number of Respondents: 1,250. The Department estimates that

approximately 550 of these respondents prepare two reports per year, while approximately 700 prepare one report per year.

Estimated Burden: 9,000 hours.

List of Subjects in 49 CFR Part 26

Administrative practice and procedure, Airports, Civil Rights, Government contracts, Grant-programs—transportation; Mass transportation, Minority Businesses, Reporting and recordkeeping requirements.

Issued this 19th day of September 2014, at Washington, DC.

Anthony R. Foxx,

Secretary of Transportation.

For the reasons set forth in the preamble, the Department of Transportation amends 49 CFR part 26 as follows:

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

■ 1. The authority citation for part 26 continues to read as follows:

Authority: 23 U.S.C. 304 and 324; 49 U.S.C. 2000d, et seq., 49 U.S.C. 47107, 47113, 47123; Section 1101(b) 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, and 23 U.S.C. 403.

■ 2. In § 26.1, redesignate paragraphs (f) and (g) as paragraphs (g) and (h), and add new paragraph (f) to read as follows:

§ 26.1 What are the objectives of this part?

* * * * *

(f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.

* * * * *

■ 3. In § 26.3, amend paragraphs (a)(1) and (2) by adding a sentence to the end of each to read as follows:

§ 26.3 To whom does this part apply?

(a) * * *

(1) * * * 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.

(2) * * * 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.

* * * * *

■ 4. Amend § 26.5 by:

■ a. Adding in alphabetical order definitions for ''Assets'', ''Business, business concern or business enterprise'', ''Contingent Liability'', and ''Days'';

■ b. Removing the definition of ''DOT/SBA Memorandum of Understanding'';

■ c. Revising the definition of ''immediate family member'';

■ d. Adding in alphabetical order definition for ''Liabilities''

■ e. Revising the definitions of ''primary industry classification'', ''principal place of business'', and ''socially and economically disadvantaged individual''; and

■ f. Adding in alphabetical order definitions for ''Spouse'' and ''Transit vehicle manufacturer (TVM)''.

The additions and revisions read as follows:

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

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

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.

* * * * *

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/.*

* * * * *

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.

* * * * *

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 rebuttably presumed to be socially and economically disadvantaged:

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

(ii) ''Hispanic Americans,'' which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) ''Native Americans,'' which includes persons who are 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, Kirbati, 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;

(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.

* * * * *

■ 5. In § 26.11, add paragraphs (d) and (e) to read as follows:

§ 26.11 What records do recipients keep and report?

* * * * *

(d) You must maintain records documenting a firm's compliance with the requirements of this part. At a minimum, you must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement. Other certification or compliance related records must be 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.

(e) The State department of transportation in each UCP established pursuant to § 26.81 of this part must report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State 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.

■ 6. Revise § 26.13, to read as follows:

§ 26.13 What assurances must recipients and contractors make?

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

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible.

§ 26.21 [Amended]

■ 7. In § 26.21, paragraph (a)(1) add the word ''primary'' before the word ''recipients'', and in paragraphs (a)(2) and (3), remove the word ''exceeding'' and add in its place the words ''the cumulative total value of which exceeds''.

■ 8. In § 26.45, revise paragraphs (c)(2), (c)(5); (d) introductory text, (e)(3), (f)(4), and (g) to read as follows:

§ 26.45. How do recipients set overall goals?

* * * * *

(c) * * *

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, you must establish a mechanism (documented in your goal submission) to directly capture data on DBE and non-DBE prime and

subcontractors that submitted bids or quotes on your DOT-assisted contracts.

* * * * *

(5) *Alternative methods.* Except as otherwise provided in this paragraph, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market. The exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section, is not an acceptable alternative means of determining the availability of DBEs.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

* * * * *

(e) * * *

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f) * * *

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the operating administration will be guided by goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

* * * * *

(g)(1) In establishing an overall goal, you must provide for consultation and publication. This includes:

(i) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.

(ii) A published notice announcing your proposed overall goal before submission to the operating administration on August 1st. The notice must be posted on your official Internet Web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your official Internet Web site.

(2) At your discretion, you may inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at your principal office and for a 30-day comment period. Notice of the comment period must include addresses to which comments may be sent. The public comment period will not extend the August 1st deadline set in paragraph (f) of this section.

* * * * *

■ 9. Revise § 26.49 to read as follows:

§ 26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.

(2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout 49 CFR part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.

(3) FTA recipient's failure to comply with the requirements set forth in paragraph (a) of this section may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).

(4) FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal.

(1) In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will bid on during the fiscal year in question, less the portion(s) attributable to the manufacturing process performed entirely by the transit vehicle manufacturer's own forces.

(i) You must consider and include in your base figure all domestic contracting opportunities made available to non-DBE firms; and

(ii) You must exclude from this base figure funds attributable to work performed outside the United States and its territories, possessions, and commonwealths.

(iii) In establishing an overall goal, the transit vehicle manufacturer must

provide for public participation. This includes consultation with interested parties consistent with § 26.45(g).

(2) The requirements of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) Transit vehicle manufacturers awarded must comply with the reporting requirements of § 26.11 of this part including the requirement to submit the Uniform Report of Awards or Commitments and Payments, in order to remain eligible to bid on FTA assisted transit vehicle procurements.

(d) Transit vehicle manufacturers must implement all other applicable requirements of this part, except those relating to UCPs and DBE certification procedures.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

(f) As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

■ 10. In § 26.51, revise paragraph (a) to read as follows:

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

* * * * *

■ 11. In § 26.53, revise paragraph (b), redesignate paragraph (f)(1) as (f)(1)(i) and add paragraph (f)(1)(ii), revise paragraphs (g) and (h), and add paragraph (j) to read as follows:

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

* * * * *

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform. 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;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

(v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.

(vi) 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; and

(3)(i) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—

(A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(B) 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.

(ii) 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.

* * * * *

(f)(1) * * *

(ii) You must include in each prime contract a provision stating:

(A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and

(B) That, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

* * * * *

(g) When a DBE subcontractor is terminated as provided in paragraph (f) of this section, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement. 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.

(h) You must 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 you deem appropriate if the prime contractor fails to comply with the requirements of this section.

* * * * *

(j) You must require the 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.

■ 12. In § 26.55, revise paragraph (d)(5), redesignate paragraph (d)(6) as (d)(7), and add new paragraph (d)(6) and paragraph (e)(4) to read as follows:

§ 26.55 How is DBE participation counted toward goals?

* * * * *

(d) * * *

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases

trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.

Example to paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

(6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example to paragraph (d)(6): DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

* * * * *

(e) * * *

(4) You must 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 expediter) on a contract-by-contract basis.

* * * * *

■ 13. In § 26.65, revise paragraph (a), and in paragraph (b), remove ''in excess of $22.41 million'' and add in its place ''in excess of $23.98 million''.

The revision reads as follows:

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.

* * * * *

■ 14. Revise § 26.67 to read as follows:

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed $1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or State law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other State to which the individual's firm has applied for certification under § 26.85 of this part.

(b) *Rebuttal of presumption of disadvantage.* (1) An individual's presumption of economic disadvantage may be rebutted in two ways.

(i) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds $1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

Example to paragraph (b)(1)(i): An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than $1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. The recipient may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than $1.32 million.

(ii)(A) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section

demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as a certifying agency, you may consider factors that include, but are not limited to, the following:

(*1*) Whether the average adjusted gross income of the owner over the most recent three year period exceeds $350,000;

(*2*) Whether the income was unusual and not likely to occur in the future;

(*3*) Whether the earnings were offset by losses;

(*4*) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;

(*5*) Other evidence that income is not indicative of lack of economic disadvantage; and

(*6*) Whether the total fair market value of the owner's assets exceed $6 million.

(B) You must have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of § 26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds $1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.

(c) *Transfers within two years.* (1) Except as set forth in paragraph (c)(2) of this section, recipients must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds $1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of appendix E of this part.

■ 15. In § 26.69, revise paragraphs (a) and (c) to read as follows:

§ 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.

* * * * *

(c)(1) The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.

(2) Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.

(3) The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.

(4) Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

Examples to paragraph (c): (i) An individual pays $100 to acquire a majority interest in a firm worth $1 million. The individual's contribution to capital would not be viewed as substantial.

(ii) A 51% disadvantaged owner and a non-disadvantaged 49% owner contribute $100 and $10,000, respectively, to acquire a firm grossing $1 million. This may be indicative of a pro forma arrangement that does not meet the requirements of (c)(1).

(iii) The disadvantaged owner of a DBE applicant firm spends $250 to file articles of incorporation and obtains a $100,000 loan, but makes only nominal or sporadic payments to repay the loan. This type of contribution is not of a continuing nature.

* * * * *

■ 16. In § 26.71, revise paragraphs (e) and (l) to read as follows:

§ 26.71 What rules govern determinations concerning control?

* * * * *

(e) Individuals who are not socially and economically disadvantaged or immediate family members may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

* * * * *

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the nondisadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm demonstrates to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned and/or controlled the firm.

* * * * *

§ 26.73 [Amended]

■ 17. In § 26.73, in paragraph (g), remove the words ''unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified'' and in paragraph (h), remove ''26.35'' and add in its place ''26.65''.

■ 18. In § 26.83, revise paragraphs (c), (h), and (j), to read as follows:

§ 26.83 What procedures do recipients follow in making certification decisions?

* * * * *

(c)(1) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

(i) Perform an on-site visit to the firm's principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(ii) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing

(iii) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;

(iv) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;

(v) 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.

(vi) 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;

(vii) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.

(viii) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in § 26.85 of this part.

(2) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part.

(3) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(4) You must review all information on the form prior to making a decision about the eligibility of the firm. You may request clarification of information contained in the application at any time in the application process.

* * * * *

(h)(1) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of § 26.87 of this part, except as provided in § 26.67(b)(1) of this part.

(2) You may not require DBEs to reapply for certification or undergo a recertification process. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under § 26.88), a complaint, or other information concerning the firm's eligibility. If information comes to your attention that leads you to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

* * * * *

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under § 26.109(c).

* * * * *

■ 19. In § 26.86, remove and reserve paragraph (b) and add a sentence to the end of paragraph (c) to read as follows:

§ 26.86 What rules govern recipients' denials of initial requests for certification?

* * * * *

(c) * * * An applicant's appeal of your decision to the Department

pursuant to § 26.89 does not extend this period.

* * * * *

■ 20. In § 26.87, revise paragraphs (f) and (g) to read as follows:

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

* * * * *

(f) *Grounds for decision.* You may base a decision to remove a firm's eligibility only on one or more of the following grounds:

(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 relevant to eligibility that has been concealed or misrepresented by the firm;

(4) A change in the certification standards or requirements of the Department since you certified the firm;

(5) Your decision to certify the firm was clearly erroneous;

(6) The firm has failed to cooperate with you (see § 26.109(c));

(7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see § 26.73(a)(2)); or

(8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.

(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. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

* * * * *

■ 21. Add § 26.88 to read as follows:

§ 26.88 Summary suspension of certification.

(a) A recipient shall immediately suspend a DBE's certification without adhering to the requirements in § 26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

(b)(1) A recipient may immediately suspend a DBE's certification without adhering to the requirements in § 26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by § 26.83(i) of this part or fails to timely file an affidavit of no change under § 26.83(j).

(2) In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this section, the recipient shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(c) The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.

(d) When a firm is suspended pursuant to paragraph (a) or (b) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.

(e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under § 26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

(f) While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

(g) Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under § 26.87 of this part. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.

(h) The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. Department of Transportation under § 26.89 of this part, as a constructive decertification.

■ 22. In § 26.89, revise paragraphs (a)(1) and (3), (c), and (e) to read as follows:

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms, you may make an administrative appeal to the Department.

* * * * *

(3) Send appeals to the following address: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590–0001.

* * * * *

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late

filing of the appeal or in the interest of justice.

* * * * *

(e) The Department makes its decision based solely on the entire administrative record as supplemented by the appeal. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

* * * * *

■ 23. Revise appendix A to part 26 to read as follows:

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (i.e., obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

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

A. (1) Conducing market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should 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 (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

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 with their offer for the subcontract.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

E. (1) 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 status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, State, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in § 26.53(b)(2)((vi), you must also require the

contractor to submit 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 to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

VI . A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

■ 24. Revise appendix B to part 26 to read as follows:

Appendix B to 49 CFR Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/ COMMITMENTS AND PAYMENTS

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

1. Indicate the DOT (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten attach a separate sheet.

3. Specify the Federal fiscal year (i.e., October 1–September 30) in which the covered reporting period falls.

4. State the date of submission of this report.

5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1–March 31. If this report is due December 1, data should cover April 1–September 30. If the report is due to the FAA, data should cover the entire year.

6. Provide the name and address of the recipient.

7. State your overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the relevant OA. Your overall goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral projections (both of which include gender-conscious/neutral projections). The Race Conscious projection should be based on measures that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race conscious measure. The Race Neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)–10(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the *total dollar amount* for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the *total number* of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the *dollar amount* awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the *number* of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR part 26, all prime contracts awarded to DBES are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the *dollar amount* awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the *number* awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A)–9(I) are derived in the same way as items 8(A)–8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(B). Provide the total number of all sub contracts assisted with DOT funds that were awarded or committed during this reporting period.

9(C). From the total dollar amount of sub contracts awarded/committed this period in item 9(A), provide the total dollar amount awarded in sub contracts to DBEs.

9(D). From the total number of sub contracts awarded or committed in item 9(B), specify the number of sub contracts awarded or committed to DBEs.

9(E). From the total dollar amount of sub contracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using Race Conscious measures.

9(F). From the total number of sub contracts awarded orcommitted to DBEs this period, provide the number of sub contracts awarded or committed to DBEs using Race Conscious measures.

9(G). From the total dollar amount of sub contracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using Race Neutral measures.

9(H). From the total number of sub contracts awarded/committed to DBEs this period, provide the number of sub contracts awarded to DBEs using Race Neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)–10(B). These fields are unavailable for data entry.

10(C–H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Section B: Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs This Period

11–17. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 17(C) should equal the Total Dollar Amount to DBEs in 10(C). Likewise the total number of contracts to DBEs in 17(F) should equal the Total Number of Contracts to DBEs in 10(D).

Line 16: The ''Non-Minority'' category is reserved for any firms whose owners are not members of the presumptively disadvantaged groups already listed, but who are either ''women'' OR eligible for the DBE program on an individual basis. All DBE firms must be certified by the Unified Certification Program to be counted in this report.

Section C: Payments on Ongoing Contracts

Line 18(A–E). Submit information on contracts that are currently in progress. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

18(A). Provide the total dollar amount paid to all firms performing work on contracts.

18(B). Provide the total number of contracts where work was performed during the reporting period.

18(C). From the total number of contracts provided in 18(A) provide the total number of contracts that are currently being performed by DBE firms for which payments have been made.

18(D). From the total dollar amount paid to all firms in 18(A), provide the total dollar value paid to DBE firms currently performing work during this period.

18(E). Provide the total number of DBE firms that received payment during this reporting period. For example, while 3 contracts may be active during this period, one DBE firm may be providing supplies or services on all three contracts. This field should only list the number of DBE firms performing work.

18(F). Of all payments made during this period, calculate the percentage going to DBEs. Divide the total dollar value to DBEs in item 18(D) by the total dollars of all payments in 18(B). Round percentage to the nearest tenth.

Section D: Actual Payments on Contracts Completed This Reporting Period

This section should provide information only on contracts that are closed during this period. All dollar amounts are to reflect the entire Federal share of such contracts, and should be rounded to the nearest dollar.

19(A). Provide the total number of contracts completed during this reporting period that used Race Conscious measures. Race Conscious contracts are those with contract goals or another race conscious measure.

19(B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious measures.

19(C). From the total dollar value of prime contracts completed this period in 19(B), provide the total dollar amount of dollars awarded or committed to DBE firms in order to meet the contract goals. This applies only to Race Conscious contracts.

19(D). Provide the actual total DBE participation in dollars on the race conscious contracts completed this reporting period.

19(E). Of all the contracts completed this reporting period using Race Conscious measures, calculate the percentage of DBE participation. Divide the total dollar amount to DBEs in item 19(D) by the total dollar value provided in 19(B) to derive this percentage. Round to the nearest tenth.

20(A)–20(E). Items 21(A)–21(E) are derived in the same manner as items 19(A)–19(E), except these figures should be based on contracts completed using Race Neutral measures.

20(C). This field is closed.

21(A)–21(D). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

21(C). This field is closed.

21(E). Calculate the overall percentage of dollars to DBEs on completed contracts. Divide the Total DBE participation dollar value in 21(D) by the Total Dollar Value of Contracts Completed in 21(B) to derive this percentage. Round to the nearest tenth.

23. Name of the Authorized Representative preparing this form.

24. Signature of the Authorized Representative.

25. Phone number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.

BILLING CODE 4910–9X–P

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS

****Please refer to the instructions sheet for directions on filling out this form****

1 Submitted to (check only one): [ ] FHWA [ ] FAA [ ] FTA—Recipient ID Number

2 AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):

3 Federal fiscal year in which reporting period falls: 4. Date This Report Submitted:

5 Reporting Period: [ ] Report due June 1 (for period Oct. 1-Mar. 31) [ ] Report due Dec. 1 (for period April 1-Sept. 30) [ ] FAA annual report due Dec. 1

6 Name and address of Recipient:

7 Annual DBE Goal(s): Race Conscious Projection: Race Neutral Projection: OVERALL Goal:

Awards/Commitments this Reporting Period

A	A	B	C	D	E	F	G	H	I
AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD (total contracts and subcontracts committed during this reporting period)	Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs /Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
8 Prime contracts awarded this period:									
9 Subcontracts awarded/committed this period:									
10 TOTAL									

B	Contracts Awarded to DBEs this Period									
BREAKDOWN BY ETHNICITY & GENDER	A	B		C	D		E		F	
	Total to DBE (dollar amount)				Total to DBE (number)					
	Women	Men	Total		Women	Men	Total			
11 Black American										
12 Hispanic American										
13 Native American										
14 Asian-Pacific American										
15 Subcontinent Asian Americans										
16 Non-Minority										
17 TOTAL										

Payments Made this Period

C	A	B	C	D	E	F
PAYMENTS ON ONGOING CONTRACTS (report activity of ongoing contracts)	Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs
18 Prime and sub contracts currently in progress						

D	A	B	C	D	E
TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD	Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs
19 Race Conscious					
20 Race Neutral					
21 Totals					

22 Submitted By: 24. Signature: 25. Phone Number:

■ 25. Revise appendix F to part 26 to read as follows:

Appendix F

UNIFORM CERTIFICATION APPLICATION

DISADVANTAGED BUSINESS ENTERPRISE (DBE) / AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) 49 C.F.R. Parts 23 and 26

Roadmap for Applicants

1. Should I apply?

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed $23.98 million in gross annual receipts for DBE ($52.47 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

2. How do I apply?

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

3. Where can I send my application? INSERT UCP PARTICIPATING MEMBER CONTACT INFORMATION]

4. Who will contact me about my application and what are the eligibility standards?

The DBE and ACDBE Programs require that all U.S. Department of Transportation (DOT) recipients of federal assistance participate in a statewide Unified Certification Program (UCP). The UCP is a one-stop certification program that eliminates the need for your firm to obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs for DOT grantees, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

5. Where can I find more information?

U.S. DOT—https://www.civilrights.dot.gov/ (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS): http://www.census.gov/eos/www/naics/ and http://www.sba.gov/content/table-small-business-size-standards.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 CFR §26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 CFR §23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

Under 49 C.F.R. §26.107, dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 2 CFR Parts 180 and 1200, Nonprocurement Suspension and Department, take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UNIFORM CERTIFICATION APPLICATION

NOTE: All participating firms must be for-profit enterprises. If your firm is not for profit, then you do NOT qualify for the DBE/ACDBE program and should not complete this application. If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

(1) Enter the contact name and title of the person completing this application and the person who will serve as your firm's contact for this application.
(2) Enter the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
(3) Enter the primary phone number of your firm.
(4) Enter a secondary phone number, if any.
(5) Enter your firm's fax number, if any.
(6) Enter the contact person's email address.
(7) Enter your firm's website addresses, if any.
(8) Enter the street address of the firm where its offices are physically located (not a P.O. Box).
(9) Enter the mailing address of your firm, if it is different from your firm's street address.

B. Prior/Other Certifications and Applications

(10) Check the appropriate box indicating whether your firm is currently certified in the DBE/ACDBE programs, and provide the name of the certifying agency that certified your firm. List the dates of any site visits conducted by your home state and any other states or UCP members. Also provide the names of state/UCP members that conducted the review.
(11) Indicate whether your firm or any of the persons listed has ever been denied certification as a DBE, 8(a), or Small Disadvantaged Business (SDB) firm, or state and local MBE/WBE firm. Indicate if the firm has ever been decertified from one of these programs. Indicate if the application was withdrawn or whether the firm was debarred, suspended, or otherwise had its bidding privileges denied or restricted by any state or local agency, or Federal entity. If your answer is yes, identify the name of the agency, and explain fully the nature of the action in the space provided. Indicate if you have ever appealed this decision to the Department and if so, attach a copy of USDOT's final agency decision(s).

Section 2: GENERAL INFORMATION

A. Business profile:

(1) Give a concise description of the firm's primary activities, the product(s) or services the company provides, or type of construction. If your company offers more than one product/service, list primary product or service first (attach additional sheets if necessary). This description may be used in our UCP online directory if you are certified as a DBE.
(2) If you know the appropriate NAICS Code for the line(s) of work you identified in your business profile, enter the codes in the space provided.
(3) State the date on which your firm was established as stated in your firm's Articles of Incorporation or charter.
(4) State the date each person became a firm owner.
(5) Check the appropriate box describing the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
(6) Check the appropriate box that indicates whether your firm is "for profit." **If you checked "No," then you do NOT qualify for the DBE/ACDBE program** and should not complete this application. All participating firms must be for-profit enterprises. If the firm is a for profit enterprise, provide the Federal Tax ID number as stated on your firm's Federal tax return.
(7) Check the appropriate box that describes the type of legal business structure of your firm, as indicated in your firm's Articles of Incorporation or similar document. Identify all joint venture partners if applicable. If you checked "Other," briefly explain in the space provided.
(8) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.
(9) Specify the firm's gross receipts for each of the past three years, as stated in your firm's filed Federal tax returns. You must submit complete copies of the firm's Federal tax returns for each year. If there are any affiliates or subsidiaries of the applicant firm or owners, you must provide these firms' gross receipts and submit complete copies of these firm(s) Federal tax returns. Affiliation is defined in 49 C.F.R. §26.5 and 13 C.F.R. Part 121.

B. Relationships and Dealings with Other Businesses

(1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, financing, or any office staff and/or employees with any other business, organization or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and fully explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or

oral agreement. Provide an explanation of any items shared with other firms in the space provided.

(2) Check the appropriate box indicating whether any other firm currently has or had an ownership interest in your firm at present or at any time in the past. If you checked yes, please explain.

(3) Check the appropriate box that indicates whether at present or at any time in the past your firm:

(a) ever existed under different ownership, a different type of ownership, or a different name;

(b) existed as a subsidiary of any other firm;

(c) existed as a partnership in which one or more of the partners are/were other firms;

(d) owned any percentage of any other firm; and

(e) had any subsidiaries of its own.

(f) served as a subcontractor with another firm constituting more than 25% of your firm's receipts.

If you answered "Yes" to any of the questions in (3)(a-f), you may be asked to explain the arrangement in detail.

Section 3: MAJORITY OWNER INFORMATION

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

A. Identify the majority owner of the firm holding 51% or more ownership interest

(1) Enter the full name of the owner.

(2) Enter his/her title or position within your firm.

(3) Give his/her home phone number.

(4) Enter his/her home (street) address.

(5) Indicate this owner's gender.

(6) Identify the owner's ethnic group membership. If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.

(7) Check the appropriate box to indicate whether this owner is a U.S. citizen or a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner.

(8) Enter the number of years during which this owner has been an owner of your firm.

(9) Indicate the percentage of the total ownership this person holds and the date acquired, including (if appropriate), the class of stock owned.

(10) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment. Describe how you acquired your business and attach documentation substantiating this investment.

B. Additional Owner Information

(1) Describe the familial relationship of this owner to each other owner of your firm and employees.

(2) Indicate whether this owner performs a management or supervisory function for any other business. If you checked "Yes," state the name of the other business and this owner's function/title held in that business.

(3) (a) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business, the nature of the business relationship, and the owner's function at the firm.

(b) If the owner works for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week, please identify this activity.

(4) (a) Provide the personal net worth of the owner applying for certification in the space provided. Complete and attach the accompanying "Personal Net Worth Statement for DBE/ACDBE Program Eligibility" with your application. Note, complete this section and accompanying statement only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged).

(b) Check the appropriate box that indicates whether any trust has been created for the benefit of the disadvantaged owner(s). If you answered "Yes," you may be asked to provide a copy of the trust instrument.

(5) Check the appropriate to indicate whether any of your immediate family members, managers, or employees, own, manage, or are associated with another company. Immediate family member is defined in 49 C.F.R. §26.5. If you answered "Yes," provide the name of each person, your relationship to them, the name of the company, the type of business, and whether they own or manage the company.

Section 4: CONTROL

A. Identify the firm's Officers and Board of Directors

(1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer.

(2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.

(3) Check the appropriate box to indicate whether any of your firm's officers and/or directors listed above performs a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.

(4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. (e.g., ownership interest, shared office space, financial investments, equipment leases, personnel sharing, etc.) If you answered "Yes," identify the name of the firm, the individual's name, and the nature of his/her business relationship with that other firm.

B. Duties of Owners, Officers, Directors, Managers and Key Personnel

(1), (2) Specify the roles of the majority and minority owners, directors, officers, and managers, and key personnel who control the functions listed for the business. Submit résumés for each owner and non-owner identified below. State the name of the individual, title, race and gender and percentage ownership if any. Circle the frequency of each person's involvement as follows: "always, frequently, seldom, or never" in each area.

Indicate whether any of the persons listed in this section perform a management or supervisory function for any other business. Identify the person, business, and their title/function. Identify if any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investment, equipment, leases, personnel sharing, etc.) If you answered "Yes," describe the nature of his/her business relationship with that other firm.

C. Inventory: Indicate firm inventory in these categories:

(1) Equipment and Vehicles
State the make and model, and current dollar value of each piece of equipment and motor vehicle held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm or owner, whether it is used as collateral, and where this item is stored.

(2) Office Space
State the street address of each office space held and/or used by your firm. Indicate whether your firm or owner owns or leases the office space and the current dollar value of that property or its lease.

(3) Storage Space
State the street address of each storage space held and/or used by your firm. Indicate whether your firm or owner owns or leases the storage space and the current dollar value of that property or its lease. Provide a signed lease agreement for each property.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," you may be asked to explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial / Banking Information

Banking Information. State the name, City and State of your firm's bank. In the space provided, identify the persons able to sign checks on this account. Provide bank authorization and signature cards

Bonding Information. State your firm's bonding limits (in dollars), specifying both the aggregate and project limits.

F. Sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms guaranteeing the loan.

State the name and address of each source, the name of person securing the loan, original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm. Provide copies of signed loan agreements and security agreements

G. Contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. Current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and issuing State of the license or permit. Attach copies of licenses, license renewal forms, permits, and haul authority forms.

I. Largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. Largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AIRPORT CONCESSION (ACDBE) APPLICANTS

Identify the concession space, address and location at the airport, the value of the property or lease, and fees/lease payments paid to the airport. Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of the concession enterprise.

AFFIDAVIT & SIGNATURE

The Affidavit of Certification must accompany your application for certification. Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

(1) Contact person and Title: _____ **(2) Legal name of firm:** _____

(3) Phone #: (___) _____ - _____ **(4) Other Phone #:** (___) _____ - _____ **(5) Fax #:** (___) _____ - _____

(6) E-mail: _____ **(7) Firm Websites:** _____

(8) Street address of firm *(No P.O. Box)*: _____ **City:** _____ **County/Parish:** _____ **State:** _____ **Zip:** _____ - ___

(9) Mailing address of firm *(if different)*: _____ **City:** _____ **County/Parish:** _____ **State:** _____ **Zip:** _____ - ___

B. Prior/Other Certifications and Applications

(10) Is your firm currently certified for any of the following U.S. DOT programs?
❑ DBE ❑ ACDBE Names of certifying agencies: _____

⊗ If you are certified in your home state as a DBE/ACDBE, you do not have to complete this application for other states. Ask your state UCP about the interstate certification process.

List the dates of any site visits conducted by your home state and any other states or UCP members:

Date ___/___/___ State/UCP Member: _____ Date ___/___/___ State/UCP Member: _____

(11) Indicate whether the firm or any persons listed in this application have ever been:

(a) Denied certification or decertified as a DBE, ACDBE, 8(a), SDB, MBE/WBE firm? ❑ Yes ❑No
(b) Withdrawn an application for these programs, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? ❑ Yes ❑ No

If yes, explain the nature of the action. *(If you appealed the decision to DOT or another agency, attach a copy of the decision,*
_____
_____

Section 2: GENERAL INFORMATION

A. Business Profile: (1) Give a concise description of the firm's primary activities and the product(s) or service(s) it provides. If your company offers more than one product/service, list the primary product or service first. Please use additional paper if necessary. This description may be used in our database and the UCP online directory if you are certified as a DBE or ACDBE.

_____
_____
_____
_____
_____
_____

(2) Applicable NAICS Codes for this line of work include: _____ _____ _____ _____ _____ _____

(3) This firm was established on ____/____/____ | **(4) I/We have owned this firm since:** ____/____/____

(5) Method of acquisition *(Check all that apply)*:
❑ Started new business ❑ Bought existing business ❑ Inherited business ❑ Secured concession
❑ Merger or consolidation ❑ Other *(explain)* _____

(6) Is your firm "for profit"? ❑ Yes ❑No→ ⊗ **STOP!** If your firm is NOT for-profit, then you do NOT qualify for this program and should not fill out this application.
Federal Tax ID# _____

(7) Type of Legal Business Structure: *(check all that apply)*:

- ❑ Sole Proprietorship
- ❑ Partnership
- ❑ Limited Liability Company
- ❑ Applying as an ACDBE
- ❑ Limited Liability Partnership
- ❑Corporation
- ❑ Joint Venture (Identify all JV partners _____)
- ❑ Other, Describe _____

(8) Number of employees: Full-time _____ Part-time _____ Seasonal _____Total _____
(Provide a list of employees, their job titles, and dates of employment, to your application).

(9) Specify the firm's gross receipts for the last 3 years. *(Submit complete copies of the firm's Federal tax returns for each year. If there are affiliates or subsidiaries of the applicant firm or owners, you must submit complete copies of these firms' Federal tax returns).*

Year _____ Gross Receipts of Applicant Firm $ _____ Gross Receipts of Affiliate Firms $_____
Year _____ Gross Receipts of Applicant Firm $_____Gross Receipts of Affiliate Firms $_____
Year _____ Gross Receipts of Applicant Firm $ _____ Gross Receipts of Affiliate Firms $_____

B. Relationships and Dealings with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office or storage space, yard, warehouse, facilities, equipment, inventory, financing, office staff, and/or employees with any other business, organization, or entity? ❑ Yes ❑ No
If Yes, explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or oral agreement. Also detail the items shared.

_____
_____
_____
_____
_____
_____
_____
_____
_____
_____

(2) Has any other firm had an ownership interest in your firm at present or at any time in the past?
❑ Yes ❑ No If Yes, explain_____

(3) At present, or at any time in the past, has your firm:

(a) Ever existed under different ownership, a different type of ownership, or a different name? ❑ Yes ❑ No
(b) Existed as a subsidiary of any other firm? ❑ Yes ❑ No
(c) Existed as a partnership in which one or more of the partners are/were other firms? ❑ Yes ❑ No
(d) Owned any percentage of any other firm? ❑ Yes ❑ No
(e) Had any subsidiaries? ❑ Yes ❑ No
(f) Served as a subcontractor with another firm constituting more than 25% of your firm's receipts? ❑ Yes ❑ No

(If you answered "Yes" to any of the questions in (2) and/or (3)(a)-(f), you may be asked to provide further details and explain whether the arrangement continues).

Section 3: MAJORITY OWNER INFORMATION

A. Identify the majority owner of the firm holding 51% or more ownership interest.

(1) Full Name: _____ | **(2) Title:** _____ | **(3) Home Phone #:** ( ) _____ - _____

(4) Home Address (*Street and Number*): _____ | **City:** _____ | **State:** _____ | **Zip:** _____ - _____

(5) Gender: ❑ Male ❑ Female

(6) Ethnic group membership *(Check all that apply)*:

❑ Black ❑ Hispanic
❑ Asian Pacific ❑ Native American
❑ Subcontinent Asian
❑ Other (*specify*) _____

(7) U.S. Citizenship:

❑ U.S. Citizen
❑ Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____
(9) Percentage owned: _____ %
Class of stock owned: _____
Date acquired _____

(10) Initial investment to acquire ownership interest in firm:

Type	Dollar Value
Cash	$
Real Estate	$
Equipment	$
Other	$

Describe how you acquired your business:
❑ Started business myself
❑ It was a gift from: _____
❑ I bought it from: _____
❑ I inherited it from: _____
❑ Other _____
(Attach documentation substantiating your investment)

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:
_____
_____
_____

(2) Does this owner perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) ❑ Yes ❑ No
Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:
_____
_____

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification ? $_____

(b)Has any trust been created for the benefit of this disadvantaged owner(s)? ❑ Yes ❑ No
(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ❑ Yes ❑ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage the company: *(Please attach extra sheets, if needed)*: _____
_____

Section 3: OWNER INFORMATION, Cont'd.

A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in the firm (*Attach separate sheets for each additional owner)*

(1) Full Name: _____ | **(2) Title:** _____ | **(3) Home Phone #:** ( ) _____ - _____

(4) Home Address (*Street and Number*): _____ | **City:** _____ | **State:** _____ | **Zip:** _____ - _____

(5) Gender: ❑ Male ❑ Female

(6) Ethnic group membership *(Check all that apply)*

❑ Black ❑ Hispanic
❑ Asian Pacific ❑ Native American
❑ Subcontinent Asian
❑ Other (*specify*) _____

(7) U.S. Citizenship:

❑ U.S. Citizen
❑ Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____
(9) Percentage owned: _____ %
Class of stock owned: _____
Date acquired _____

(10) Initial investment to acquire ownership interest in firm:

Type	Dollar Value
Cash	$
Real Estate	$
Equipment	$
Other	$

Describe how you acquired your business:
❑ Started business myself
❑ It was a gift from: _____
❑ I bought it from: _____
❑ I inherited it from: _____
❑ Other _____
(Attach documentation substantiating your investment)

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:
_____
_____
_____

(2) Does this owner perform a management or supervisory function for any other business? ❑ Yes ❑ No
If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) ❑ Yes ❑ No
Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:
_____

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? $_____

(b)Has any trust been created for the benefit of this disadvantaged owner(s)? ❑ Yes ❑ No
(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ❑ Yes ❑ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage: *(Please attach extra sheets, if needed)*: _____
_____

Section 4: CONTROL

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

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

(3) Do any of the persons listed above perform a management or supervisory function for any other business?
❑ Yes ❑ No If Yes, identify for each:

Person: _____ Title: _____
Business: _____ Function: _____

Person: _____ Title: _____
Business: _____ Function: _____

(4) Do any of the persons listed in section A above own or work for any other firm(s) that has a relationship with this firm? *(e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)*
❑ Yes ❑ No If Yes, identify for each:

Firm Name: _____ Person: _____
Nature of Business Relationship: _____

B. Duties of Owners, Officers, Directors, Managers, and Key Personnel
1. *(Identify your firm's management personnel who control your firm in the following areas (Attach separate sheets as needed).*

A= Always F = Frequently	**S = Seldom N = Never**	Majority Owner (51% or more) Name: _____ Title: _____ Percent Owned: _____				Minority Owner (49% or less) Name: _____ Title: _____ Percent Owned: _____			
Sets policy for company direction/scope of operations		A	F	S	N	A	F	S	N
Bidding and estimating		A	F	S	N	A	F	S	N
Major purchasing decisions		A	F	S	N	A	F	S	N
Marketing and sales		A	F	S	N	A	F	S	N
Supervises field operations		A	F	S	N	A	F	S	N
Attend bid opening and lettings		A	F	S	N	A	F	S	N
Perform office management (billing, accounts receivable/payable, etc.)		A	F	S	N	A	F	S	N
Hires and fires management staff		A	F	S	N	A	F	S	N
Hire and fire field staff or crew		A	F	S	N	A	F	S	N
Designates profits spending or investment		A	F	S	N	A	F	S	N
Obligates business by contract/credit		A	F	S	N	A	F	S	N
Purchase equipment		A	F	S	N	A	F	S	N
Signs business checks		A	F	S	N	A	F	S	N

2. Complete for all Officers, Directors, Managers, and Key Personnel who control the following functions for the firm. *(Attach separate sheets as needed).*

A= Always S = Seldom F = Frequently N = Never	Officer/Director/Manager/Key Personnel Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____				Officer/Director/Manager/ Key Personnel Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____			
Sets policy for company direction/scope of operations	A	F	S	N	A	F	S	N
Bidding and estimating	A	F	S	N	A	F	S	N
Major purchasing decisions	A	F	S	N	A	F	S	N
Marketing and sales	A	F	S	N	A	F	S	N
Supervises field operations	A	F	S	N	A	F	S	N
Attend bid opening and lettings	A	F	S	N	A	F	S	N
Perform office management (billing, accounts receivable/payable, etc.)	A	F	S	N	A	F	S	N
Hires and fires management staff	A	F	S	N	A	F	S	N
Hire and fire field staff or crew	A	F	S	N	A	F	S	N
Designates profits spending or investment	A	F	S	N	A	F	S	N
Obligates business by contract/credit	A	F	S	N	A	F	S	N
Purchase equipment	A	F	S	N	A	F	S	N
Signs business checks	A	F	S	N	A	F	S	N

Do any of the persons listed in B1 or B2 perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function: _____

_____

Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm? (*e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.*) If Yes, describe the nature of the business relationship: _____

_____

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

1. Equipment and Vehicles

	Make and Model	**Current Value**	**Owned or Leased by Firm or Owner?**	**Used as collateral?**	**Where is item stored?**
1.					
2.					
3.					
4.					
5.					
6.					
7.					
8.					
9.					

2. Office Space

Street Address	**Owned or Leased by Firm or Owner?**	**Current Value of Property or Lease**

3. Storage Space *(Provide signed lease agreements for the properties listed)*

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease

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

E. Financial/Banking Information *(Provide bank authorization and signature cards)*

Name of bank: _____ City and State: _____
The following individuals are able to sign checks on this account: _____

Name of bank: _____ City and State: _____
The following individuals are able to sign checks on this account: _____

Bonding Information: If you have bonding capacity, identify the firm's bonding aggregate and project limits:
Aggregate limit $ _____ Project limit $ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm including from financial institutions. Identify whether you the owner and any other person or firm loaned money to the applicant DBE/ACDBE. Include the names of any persons or firms guaranteeing the loan, if other than the listed owner. (*Provide copies of signed loan agreements and security agreements).*

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

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

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

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

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

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

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

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

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

AIRPORT CONCESSION (ACDBE) APPLICANTS ONLY MUST COMPLETE THIS SECTION

Identify the following information concerning the ACDBE applicant firm:

Concession Space	Address / Location at Airport	Value of Property or Lease	Fees/Lease Payments Paid to the Airport

Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession

Name of Concession	Location	Type of Concession	Start Date of Concession

AFFIDAVIT OF CERTIFICATION

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

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

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

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

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

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

I agree to provide written notice to the recipient agency or Unified Certification Program of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership changes, address/telephone number, personal net worth exceeding $1.32 million, etc.).

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

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

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

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

I further certify that my personal net worth does not exceed $1.32 million, and that I am economically disadvantaged because my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

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

Signature _____ _____
(DBE/ACDBE Applicant) (Date)

NOTARY CERTIFICATE

UNIFORM CERTIFICATION APPLICATION
SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following REQUIRED documents. A failure to supply any information requested by the UCP may result in your firm denied DBE/ACDBE certification.

Required Documents for All Applicants

☐ Résumés (that include places of employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
☐ Personal Net Worth Statement for each socially and economically disadvantaged owners comprising 51% or more of the ownership percentage of the applicant firm.
☐ Personal Federal tax returns for the past 3 years, if applicable, for each disadvantaged owner
☐ Federal tax returns (and requests for extensions) filed by the firm and its affiliates with related schedules, for the past 3 years.
☐ Documented proof of contributions used to acquire ownership for each owner (*e.g., both sides of cancelled checks*)
☐ Signed loan and security agreements, and bonding forms
☐ List of equipment and/or vehicles owned and leased including VIN numbers, copy of titles, proof of ownership, insurance cards for each vehicle.
☐ Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm
☐ Licenses, license renewal forms, permits, and haul authority forms
☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past 2 years
☐ DBE/ACDBE and SBA 8(a), SDB, MBE/WBE certifications, denials, and/or decertifications, if applicable; and any U.S. DOT appeal decisions on these actions.
☐ Bank authorization and signatory cards
☐ Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
☐ List of all employees, job titles, and dates of employment.
☐ Proof of warehouse/storage facility ownership or lease arrangements

Partnership or Joint Venture
☐ Original and any amended Partnership or Joint Venture Agreements

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

Optional Documents to Be Provided on Request

The UCP to which you are applying may require the submission of the following documents. If requested to provide these document, you must supply them with your application or at the on-site visit.

☐ Proof of citizenship
☐ Insurance agreements for each truck owned or operated by your firm
☐ Audited financial statements (if available)
☐ Personal Federal Tax returns for the past 3 years, if applicable, for other disadvantaged owners of the firm.
☐ Trust agreements held by any owner claiming disadvantaged status
☐ Year-end balance sheets and income statements for the past 3 years (*or life of firm, if less than three years*)

Suppliers
☐ List of product lines carried and list of distribution equipment owned and/or leased

U.S. DOT Uniform DBE/ACDBE Certification Application • Page 14 of 14

■ 26. Add appendix G to part 26 to read as follows:

Appendix G to Part 26—Personal Net Worth Statement

U.S. Department of Transportation

Personal Net Worth Statement
For DBE/ACDBE Program Eligibility

As of _____

OMB APPROVAL NO:
EXPIRATION DATE:

This form is used by all participants in the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Programs. Each individual owner of a firm applying to participate as a DBE or ACDBE, whose ownership and control are relied upon for DBE certification must complete this form. Each person signing this form authorizes the Unified Certification Program (UCP) recipient to make inquiries as necessary to verify the accuracy of the statements made. The agency you apply to will use the information provided to determine whether an owner is economically disadvantaged as defined in the DBE program regulations 49 C.F.R. Parts 23 and 26. **Return form to appropriate UCP certifying member, not U.S. DOT.**

Name		Business Phone
Residence Address (As reported to the IRS) City, State and Zip Code		Residence Phone
Business Name of Applicant Firm		
Spouse's Full Name (Marital Status: Single, Married, Divorced, Union)		

ASSETS	(Omit Cents)	**LIABILITIES**	(Omit Cents)
Cash and Cash Equivalents	$	Loan on Life Insurance (Complete Section 5)	$
Retirement Accounts (IRAs, 401Ks, 403Bs, Pensions, etc.) (Report full value minus tax and interest penalties that would apply if assets were distributed today) (Complete Section 3)	$	Mortgages on Real Estate Excluding Primary Residence Debt (Complete Section 4)	$
Brokerage, Investment Accounts	$	Notes, Obligations on Personal Property (Complete Section 6)	$
Assets Held in Trust	$	Notes & Accounts Payable to Banks and Others (Complete Section 2)	$
Loans to Shareholders & Other Receivables (Complete section 6)	$	Other Liabilities (Complete Section 8)	$
Real Estate Excluding Primary Residence (Complete Section 4)	$	Unpaid Taxes (Complete Section 8)	$
Life Insurance (Cash Surrender Value Only) (Complete Section 5)	$		
Other Personal Property and Assets (Complete Section 6)	$		
Business Interests Other Than the Applicant Firm (Complete Section 7)	$		
Total Assets	$	Total Liabilities	$
		NET WORTH	

Section 2. Notes Payable to Banks and Others

Name of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 3. Brokerage and custodial accounts, stocks, bonds, retirement accounts. (Full Value) (Use attachments if necessary).

Name of Security / Brokerage Account / Retirement Account	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned (Including Primary Residence, Investment Properties, Personal Property Leased or Rented for Business Purposes, Farm Properties, or any Other Income Producing property). (List each parcel separately. Add additional sheets if necessary).

	Primary Residence	Property B	Property C
Type of Property			
Address			
Date Acquired and Method of Acquisition (purchase, inherit, divorce, gift, etc.)			
Names on Deed			
Purchase Price			
Present Market Value			
Source of Market Valuation			
Name of all Mortgage Holders			
Mortgage Acc. # and balance (as of date of form)			
Equity line of credit balance			
Amount of Payment Per Month/Year (Specify)			

Section 5. Life Insurance Held (Give face amount and cash surrender value of policies, name of insurance company and beneficiaries).

Insurance Company	Face Value	Cash Surrender Amount	Beneficiaries	Loan on Policy Information

Section 6. Other Personal Property and Assets (Use attachments as necessary)

Type of Property or Asset	Total Present Value	Amount of Liability (Balance)	Is this asset insured?	Lien or Note amount and Terms of Payment
Automobiles and Vehicles (including recreation vehicles, motorcycles, boats, etc.) Include personally owned vehicles that are leased or rented to businesses or other individuals.				
Household Goods / Jewelry				
Other (List)				
Accounts and Notes Receivables				

Section 7. Value of Other Business Investments, Other Businesses Owned (excluding applicant firm)
Sole Proprietorships, General Partners, Joint Ventures, Limited Liability Companies, Closely-held and Public Traded Corporations

Section 8. Other Liabilities and Unpaid Taxes (Describe)

Section 9. Transfer of Assets: Have you within 2 years of this personal net worth statement, transferred assets to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust? Yes □ No □ If yes, describe.

I declare under penalty of perjury that the information provided in this personal net worth statement and supporting documents is complete, true and correct. I certify that no assets have been transferred to any beneficiary for less than fair market value in the last two years. I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application and this personal net worth statement, and I authorize such agency to contact any entity named in the application or this personal financial statement, including the names banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility. I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

NOTARY CERTIFICATE:
(Insert applicable state acknowledgment, affirmation, or oath)

Signature (DBE/ACDBE Owner) Date

In collecting the information requested by this form, the Department of Transportation complies with Federal Freedom of Information and Privacy Act (5 U.S.C. 552 and 552a) provisions. The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Disadvantaged Business Enterprise (DBE) Program or Airport Concessionaire DBE Programs as defined in 49 C.F.R. Parts 23 and 26. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

General Instructions for Completing the Personal Net Worth Statement for DBE/ACDBE Program Eligibility

Please do not make adjustments to your figures pursuant to U.S. DOT regulations 49 C.F.R. Parts 23 and 26. The agency that you apply to will use the information provided on your completed Personal Net Worth (PNW) Statement to determine whether you meet the economic disadvantage requirements of 49 C.F.R. Parts 23 and 26. If there are discrepancies or questions regarding your form, it may be returned to you to correct and complete again.

An individual's personal net worth according to 49 C.F.R. Parts 23 and 26 includes only his or her own share of assets held separately, jointly, or as community property with the individual's spouse and excludes the following:

- Individual's ownership interest in the applicant firm;
- Individual's equity in his or her primary residence;
- Tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.

Indicate on the form, if any items are jointly owned. If the personal net worth of the majority owner(s) of the firm exceeds $1.32 million, as defined by 49 C.F.R. Parts 23 and 26, the firm is not eligible for DBE or ACDBE certification. If the personal net worth of the majority owner(s) exceeds the $1.32 million cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise that your firm no longer qualifies as a DBE or ACDBE. You must fill out all line items on the Personal Net Worth Statement.

If necessary, use additional sheets of paper to report all information and details. If you have any questions about completing this form, please contact one of the UCP certifying agencies.

Assets

All assets must be reported at their current fair market values as of the date of your statement. ***Assessor's assessed value for real estate, for example, is not acceptable.*** Assets held in a trust should be included.

Cash and Cash Equivalents: On page 1, enter the total amount of cash or cash equivalents in bank accounts, including checking, savings, money market, certificates of deposit held domestic or foreign. Provide copies of the bank statement.

Retirement Accounts, IRA, 401Ks, 403Bs, Pensions: On page 1, enter the full value minus tax and interest penalties that would apply if assets were distributed as of the date of the form. Describe the number of shares, name of securities, cost market value, date of quotation, and total value in section 3 on page 2.

Brokerage and Custodial Accounts, Stocks, Bonds, Retirement Accounts: Report total value on page 1, and on page 2, section 3, enter the name of the security, brokerage account, retirement account, etc.; the cost; market value of the asset; the date of quotation; and total value as of the date of the PNW statement.

Assets Held in Trust: Enter the total value of the assets held in trust on page 1, and provide the names of beneficiaries and trustees, and other information in Section 6 on page 3.

Loans to Shareholders and Other Receivables not listed: Enter amounts loaned to you from your firm, from any other business entity in which you hold an ownership interest, and other receivables not listed above. Complete Section 6 on page 3.

Real Estate: The total value of real estate excluding your primary residence should be listed on page 1. In section 4 on page 2, please list your primary residence in column 1, including the address, method of acquisition, date of acquired, names of deed, purchase price, present fair market value, source of market valuation, names of all mortgage holders, mortgage account number and balance, equity line of credit balance, and amount of payment. List this information for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial properties, personal property leased or rented for business purposes, farm properties and any other income producing properties, etc. Attach additional sheets if needed.

Life Insurance: On page 1, enter the cash surrender value of this asset. In section 5 on page 2, enter the name of the insurance company, the face value of the policy, cash surrender value, beneficiary names, and loans on the policy.

Other Personal Property and Assets: Enter the total value of personal property and assets you own on page 1. Personal property includes motor vehicles, boats, trailers, jewelry, furniture, household goods, collectibles, clothing, and personally owned vehicles that are leased or rented to businesses or other individuals. In section 6 on page 3, list these assets and enter the present value, the balance of any liabilities, whether the asset is insured, and lien or note information and terms of payments. For accounts and notes receivable, enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm, if those exist. If the asset is insured, you may be asked to provide a copy of the policy. You may also be asked to provide a copy of any liens or notes on the property.

Other Business Interests Other than Applicant Firm: On page 1, enter the total value of your other business investments (excluding the applicant firm). In section 7 on page 3, enter information concerning the businesses you

hold an ownership interest in, such as sole proprietorships, partnerships, joint ventures, corporations, or limited liability corporations (other than the applicant firm). Do not reduce the value of these entries by any loans from the outside firm to the DBE/ACDBE applicant business.

Liabilities

Mortgages on Real Estate: Enter the total balance on all mortgages payable on real estate on page 1.

Loans on Life Insurance: Enter the total value of all loans due on life insurance policies on page 1, and complete section 5 on page 2.

Notes & Accounts Payable to Bank and Others: On page 1, section 2, enter details concerning any liability, including name of noteholders, original and current balances, payment terms, and security/collateral information. The entries should include automobile installment accounts. This should not, however, include any mortgage balances as this information is captured in section 4. Do not include loans for your business or mortgages for your properties in this section. You may be asked to submit copy of note/security agreement, and the most recent account statement.

Other Liabilities: On page 1, enter the total value due on all other liabilities not listed in the previous entries. In section 8, page 3, report the name of the individual obligated, names of co-signers, description of the liability, the name of the entity owed, the date of the obligation, payment amounts and terms. Note: Do not include contingent liabilities in this section. Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do not count toward your net worth until they become actual liabilities.

Unpaid Taxes: Enter the total amount of all taxes that are currently due, but are unpaid on page 1, and complete section 8 on page 3. Contingent tax liabilities or anticipated taxes for current year should not be included. Describe in detail the name of the individual obligated, names of co-signers, the type of unpaid tax, to whom the tax is payable, due date, amount, and to what property, if any, the tax lien attaches. If none, state "NONE." You must include documentation, such as tax liens, to support the amounts.

Transfers of Assets:

Transfers of Assets: If you checked the box indicating yes on page 3 in this category, provide details on all asset transfers (within 2 years of the date of this personal net worth statement) to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust. Include a description of the asset; names of individuals on the deed, title, note or other instrument indicating ownership rights; the names of individuals receiving the assets and their relation to the transferor; the date of the transfer; and the value or consideration received. Submit documentation requested on the form related to the transfer.

Affidavit

Be sure to sign and date the statement. The Personal Net Worth Statement must be notarized

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