Disadvantaged Business Enterprise Program

Franklin Transit Authority
Grantee ID# 6417

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Policy Statement

The Franklin Transit Authority (FRTA) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. FRTA receives federal financial assistance from the USDOT and as a condition of receiving this assistance, FRTA has signed the assurance that it will comply with 49 CFR Part 26.

It is the policy of FRTA to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also FRTA’s policy and objectives to:

1. Ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
2. Create a level playing field in which DBEs can compete fairly for USDOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that 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 USDOT-assisted contracts; and
6. Assist firms so they can compete successfully in the marketplace outside the DBE Program.

The Executive Director has been designated as the DBE Liaison Officer (DBELO). In that capacity, the Executive Director is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by FRTA in its financial assistance agreements with the USDOT.

FRTA has disseminated this policy statement to The TMA Group, manager and operator of the Franklin Transit Authority, and all components of our organization. This statement will be distributed to DBE and non-DBE business communities that perform work for us on USDOT-assisted contracts. This policy statement is provided to the business community as part of the RFP process and is also posted on the Franklin Transit Authority’s website (www.franklintransit.org).

______________________________
Debbie Henry, Executive Director, The TMA Group

______________________________
Date
Subpart A - General Requirements

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

Applicability (Section 26.3)

Definitions (Section 26.5)
FRTA has adopted the definitions contained in Section 26.5 for this program.

Non-discrimination (Section 26.7)
FRTA will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR Part 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, the FRTA 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.

Record Keeping Requirements (Section 26.11)

Reporting to DOT (Part 26.11(b))
FRTA will report DBE participation to the Federal Transit Administration semi-annually, via the Civil Rights reporting within the TrAMS system.

Bidders List (26.11(c))
FRTA will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders list approach to calculate overall goals. The bidders list will include the name, address, DBE status, age, and annual gross receipts of firms.

We will collect this information in the following way:

A Bidders List Information Form (Attachment 2) will be included in all FRTA ITBs, RFPs, and contracts, requiring prime bidders to report names, addresses, DBE status, and other information. The names of all bidders received from the completed Bidders List Information Form will be entered and maintained in the FRTA DBE Bidders List.
**Federal Financial Assistance Agreement (Section 26.13)**
FRTA has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

**Assurance (Section 26.13 (a))**
FRTA 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. FRTA shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT assisted contracts. FRTA’s DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to FRTA of its failure to carry out its approved program, USDOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

**Contract Assurance (Section 26.13(b))**
FRTA will ensure that the following clause is placed in every DOT-assisted contract and subcontract:

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

**Subpart B - Administrative Requirements**

**DBE Program Updates (Section 26.21)**
Since the FRTA has received a grant of $250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year, we will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to DOT updates representing significant changes in the program.

**Policy Statement (Section 26.23)**
The objectives are found in the policy statement on the first page of this program.

**DBE Liaison Officer (DBELO) (Section 26.25)**
FRTA has designated the following individual as our DBELO:

Debbie Henry
708 Columbia Ave
Franklin, TN 37064
615-628-0264
In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring FRTA complies with all provision of 49 CFR Part 26. The DBELO is Debbie Henry, Executive Director of The TMA Group, in charge of matters concerning DBE program. An organization chart displaying the DBELO’s position in the organization is found in Attachment 1 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO’s duties and responsibilities include the following:

- Gathers and reports statistical data and other information as required by DOT.
- Reviews third party contracts and purchase requisitions for compliance with this program.
- Works with all departments to set overall annual goals.
- Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
- 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).
- Analyzes FRTA’s progress toward attainment and identifies ways to improve progress.
- Participates in pre-bid meetings.
- Advises the Franklin Transit Authority on DBE matters and achievement.
- Plans and participates in DBE training seminars.
- Provides outreach to DBEs and community organizations to advise them of opportunities.
- Maintains FRTA’s updated bidders list.
- Updates and distributes FRTA’s DBE program.
- Ensures updated DBE information is on our website.

**DBE Financial Institutions (Section 26.27)**

It is the policy of FRTA 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 obtained information from the Federal Reserve Board on Minority-Owned Financial Institutions. There is currently one minority-owned bank within 200 miles of Franklin, TN, Citizens Savings Bank and Trust in Nashville, TN. Information on the availability of such institutions can be obtained from the DBE Liaison Officer.

**Prompt Payment Mechanisms (Section 26.29)**

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

FRTA has established, as part of its DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their work no later than 30 days after the contractor’s receipt of payment for that work from the Franklin Transit Authority. In addition, the contractor is required to return any retainage payments to those subcontractors within 30 days after incremental acceptance of the subcontractor’s work by the Franklin Transit Authority and contractor’s receipt of the
partial retainage payment related to the subcontractor’s work. Each contract will be reviewed with respect to retainage eligibility and conformity.

**Directory (Section 26.31)**

FRTA uses the TNUCP (Tennessee Unified Certification Program) directory to identify all Tennessee DBE firms. The directory lists the firm’s name, address, phone number, date of most recent certification, and the type of work the firm has been certified to perform as a DBE. The TNUCP revises the directory on an ongoing basis. FRITA makes the directory available as follows: a link to the directory is provided on Franklin Transit Authority’s website (www.franklintransit.org), and a hard copy of the directory can be made available upon request at FRITA’s transit center (708 Columbia Ave, Franklin, TN 37064).

**Overconcentration (Section 26.33)**

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

**Business Development Programs (Section 26.35)**

FRTA has not established a business development program.

**Monitoring and Enforcement Mechanisms (Section 26.37)**

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

1. FRITA will bring to the attention of the U.S. Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. FRITA will consider similar action, including responsibility determinations in future contracts.
3. FRITA will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by the following efforts:
   a. Direct observation by a staff member during contract performance for work sites with DBE contractors and/or subcontractors via work site visits. Visits will be documented on form *Site Visit of DBE Contractor* (Attachment 4). During work site visits, the staff member will briefly interview employees of the DBE contractor/subcontractor.
   b. Sub-contract agreements of any projects where the contractor is using DBE subcontractors will be reviewed.
   c. The title of any equipment being used on a FRITA projects to determine if the equipment is owned or leased by the DBE will be checked.
   d. Payroll records of a DBE contractor/subcontractor will be checked to verify that employees working on a FRITA project are employees of the DBE.
   e. As part of FRITA’s ongoing audits of contract payments to DBEs, a *DBE Participation Report & Prompt Payment Certificate* (Attachment 3) will be included in contracts with contractors using DBE subcontractors. Contractors are to maintain and furnish records of payments to DBEs as requested by FRITA or its assigned designee.
   f. Contracting records will be reviewed. The review of contracting records will include an audit of payments to DBE subcontractors by the primary contractor to ensure the actual
amount paid to DBE subcontractors by the primary contractor equals or exceeds the dollar amount stated in the schedule of DBE participation.

FRTA’s DBELO will only count participation toward the overall DBE goal when payments have been made to DBE firms.

Subpart C – Goals, Good Faith Efforts, and Counting

Set-asides or Quotas (Section 26.43)
FRTA does not use set-asides or quotas in any way in the administration of this DBE program.

Overall Goals (Section 26.45)
A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 5 to this program. This section of the program will be updated annually.

In accordance with Section 26.45(f), FRTA will submit its overall goal to DOT as required. Before establishing the overall goal, FRTA will consult the most current available County Business data from the U.S. Census Bureau and the list of certified DBEs from the current TDOT UCP Certified Disadvantage Business Enterprise Listing that perform work in Williamson County, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the FRTA’s efforts to establish a level playing field for the participation of DBEs. This data is utilized during Step One of the goal calculation detailed in Attachment 5. FRTA’s most recent triennial overall DBE goal will be submitted to the Federal Transit Administration as specified by FTA for cycle group C and will be approved by the FTA Civil Rights Office.

FRTA’s current DBE goal is 100% race-neutral. FRTA anticipates the DBE goal will continue to be met by 100% race-neutral means in future years, but will request use of project-specific DBE goals as appropriate and will establish project-specific DBE goals as directed by FTA.

If the DBE awards and commitments on FRTA’s Uniform Report of Awards, or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, we will:

- Analyze the reason for the difference between the overall goal and the actual awards/commitments
- Establish specific steps and milestones to correct the problems identified in the analysis
- Maintain the analysis and corrective actions and have them available upon request of Federal Transit Administration.

Public Participation/Consultation
FRTA conducts a DBE public consultation meeting held at the FRTA Transit Center during operating hours, for the convenience of members of the public who wish to use public transportation to travel to/from the meeting. Written comments are accepted from anyone who is unable to attend the meeting, but wishes to make comments. A copy of our goal and methodology is available at our Transit center for review.
FRTA mails letters to all local minority, women’s groups and organizations to inform and invite them to the DBE goal public meeting, and inform them FRTA will accept written questions and comments. The low minority population in Franklin (approximately 20.9% per 2018 U.S. Census data estimates) results in a limited number of minority groups and organizations existing in the Franklin area.

The goal and methodology will be posted on The TMA Group website for review and comments. The following organizations will be contacted regarding a public meeting:

- Tennessee Business Enterprise Resource Office
- Williamson County Chamber of Commerce
- Hispanic Chamber of Commerce
- Nashville Area MPO
- Nashville Black Chamber of Commerce
- Tennessee Department of Transportation- Civil Rights Office
- Tennessee Department of Economic and Community Development

**Overall DBE Goal Submission to Federal Transit Administration**

FRTA’s overall DBE goal submission to FTA includes:

1. The goal;
2. Copy of methodology;
3. Worksheets and/or support documents used to develop the goal; and
4. Summary of information and comments received during this public participation process, and our responses.

**Implementation of Overall DBE Goal**

FRTA will begin its overall DBE goal on September 30 of the year for cycle group C recipients unless FRTA has received other instructions from FTA. FRTA’s DBE goal will remain effective for the duration of the three-year period established and approved by FTA.

**Transit Vehicle Manufacturers Goals (Section 26.49)**

FRTA will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify it has complied with the requirements of Section 26.49 by establishing an annual overall DBE goal, submitting the goal to FTA, and receiving FTA approval of that goal.

**Breakout of Estimated Race-Neutral & Race-Conscious Participation (Section 26.51(a-c))**

FRTA has met and anticipates meeting its overall DBE goal using race-neutral measures. As a small urban transit system in an urbanized area above 200,000, FRTA utilizes a large portion of FTA funding for day-to-day operating and capital expenditures and has few large capital purchases or major projects. In order to meet its goal through race-neutral measures, FRTA will:
• Arrange all possible aspects of solicitations in a way that facilitates DBE participation;
• Unbundle contracts when appropriate;
• Reduce bonding requirements when possible;
• Ensure inclusion of DBEs with applicable NAICS codes on FRTA’s mailings to potential bidders/proposers;
• Ensure guidance on providing prime contractors lists/information on DBEs and subcontracting opportunities.

Contract Goals (Section 26.51(d-g))
In the event FRTA is unable to meet any portion of its overall goal using race-neutral means, FRTA will use contract specific goals to meet the remaining portion of the overall goal. If contract goals should become necessary, they will be established so they will cumulatively result in meeting any portion of FRTA’s overall goal that is not projected to be met through race-neutral means.

FRTA will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. FRTA will not need to establish a contract goal on every such contract, and the size of contracts goals will be adapted to the circumstances of each such contract (type and location of work/availability of DBEs to perform the particular type of work). FRTA will express contract goals as a percentage of the Federal share of USDOT-assisted contract.

Good Faith Efforts Procedure (Section 26.53)
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.

Award of Contracts with a DBE Contract Goal (26.53(a))
In instances where a contract-specific DBE goal is included in the procurement, FRTA will not award the contract to a bidder who does not either meet the contract goal with a verified countable DBE participation or documents it has made adequate good faith efforts to meet the DBE contract goal. It is the obligation of the bidder to demonstrate it has made sufficient good faith efforts prior to submission of its bid.

Evaluation of Good Faith Efforts (26.53 (a)(c))
The following personnel are responsible for determining whether or not a contractor has made good faith efforts: Debbie Henry, Executive Director, and Sharmila Patel, Procurement Officer. The following are considered in determining whether good faith efforts have been made by a bidder:

- Ensuring solicitation through all reasonable and available means
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manor
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved

FRTA will ensure all information is complete and accurate and adequately documents the bidder’s good faith efforts before committing to the award of the contract.
Information to be submitted (26.53(b))

FRTA treats bidder/offers’ compliance with good faith efforts’ requirements as a matter of responsiveness.

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

- The names and addresses of DBE firms that will participate in the contract
- A description of the work that each DBE will perform
- The dollar amount of the participation of each DBE firm participating
- Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal
- Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor’s commitment.

In addition to the above confirmation, if the contract goal is not met, evidence of good faith efforts must be provided with supporting documentation.

Administrative Reconsideration (26.53(d))

Within seven (7) days of being informed by FRTA that it is not responsive because it has not sufficiently documented good faith efforts, a bidder may request administrative reconsideration. A bidder should make this request in writing to the following official:

Name: Debbie Henry  
Title: Executive Director  
Address: 708 Columbia Ave  
Franklin, TN 37064  
Telephone: 615-628-0264  
E-mail: Dhenry@tmagroup.org

The reconsideration official will not have played any role in the original determination that the bidder did not document good faith efforts.

As part of this reconsideration, the bidder 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 will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal, or made good faith efforts to do so. A written decision will be sent to the bidder on reconsideration, explaining the basis for finding the bidder did or did not meet the goal, or make 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))

FRTA will require that prime contractors not terminate a DBE subcontractor listed on a bid/contract with a DBE contract goal without FRTA’s prior written consent. Prior written consent will only be provided
where there is “good cause” for termination of the DBE firm, as established by Section 26.53 (f)(3) of the DBE regulation.

Before submitting a request to terminate, the prime contractor must give written notice to the DBE of its intent to do so. A copy of this notice must be provided to FRTA prior to consideration of the request to terminate. The DBE will then have five (5) days to respond and advise FRTA of why it objects to the proposed termination. The five-day period may be reduced by FRTA if it is a matter of public necessity. If the five-day period is reduced, FRTA will notify the prime contractor and DBE as soon as possible of the shortened response period.

In those instances where “good cause” exists to terminate a DBE’s contract, FRTA will require the prime contractor to make good faith efforts to replace a DBE to the extent needed to meet the contract goal. In this situation, FRTA will require the prime contractor to obtain prior approval of the substitute DBE and to provide copies of new or amended subcontracts or documentation of good faith efforts within 21 days.

If the contractor fails or refuses to comply in the time specified, FRTA will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply FRTA may issue a termination for default proceeding.

Sample Bid Specification for DBE Goal-Specific Contracts:

a. This contract is subject to the requirements of Title 49, Code of Federal Regulations, Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs. The national goal for participation of Disadvantaged Business Enterprises (DBE) is 10%. The agency’s overall goal for DBE participation for the current Federal Fiscal Year is ___%. **A DBE contract goal of ___% has been established for this procurement.**

b. The contractor 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 this DOT-assisted contract. 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 FRTA deems appropriate. Each subcontract the contractor signs with a subcontractor must include the assurance in this paragraph (see 49 CFR 26.13(b)).

c. Bidders/proposers will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder’s commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract; (5) if the contract goal is not met, evidence of good faith efforts. The successful bidder/proposer will be required to report its DBE participation throughout the period of performance.

d. The prime contractor is required to pay its subcontractors performing work related to this contract for satisfactory performance of that work no later than 30 days after the contractor’s receipt of payment for that work from FRTA. FRTA requires the contractor to submit a completed “Prompt Payment Certification” to FRTA no later than 30 days after the contractor’s receipt of payment from FRTA as verification of the contractor’s payment to its subcontractors for work related to this contract.
e. Prime contractors shall not terminate a DBE subcontractor with a DBE contract goal without FRTA’s prior written consent. Prior written consent will only be provided where there is “good cause” for termination of the DBE firm as established by Section 26.53(f)(3) of the DBE regulation. Before submitting a request to terminate a DBE subcontractor, the prime contractor must give notice in writing to the DBE with a copy to FRTA of its intent to do so. The DBE will then have five (5) days to respond and advise FRTA of any objections to the proposed termination. Instances where “good cause” exists to terminate a DBE’s contract, FRTA will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. In this situation, FRTA will require the prime contractor to obtain FRTA’s prior approval of the substitute DBE and to provide copies of new or amended subcontract, or documentation of good faith efforts within 21 days. If the contractor fails or refuses to comply in the time specified FRTA will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply FRTA may issue a termination for default proceeding.

Counting DBE Participation (Section 26.55)
FRTA will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55.

Subpart D – Certification Standards

Certification Process (Sections 26.61-26.73)
FRTA uses the Tennessee Unified Certification Program (TNUCP). The TNUCP will meet all of the requirements of 49 CFR Part 26. FRTA will use and count for DBE credit only those DBE firms certified by the TNUCP.

Subpart E – Certification Procedures

Unified Certification Programs (Sections 26.81)
FRTA is not a certifying entity. FRTA relies on the TNUCP for certification of DBEs, certification decisions, and certification appeals. A link to the TNUCP website is on the Civil Rights page of The TMA Group’s website, and hard copies of the TNUCP information are available upon request at FRTA’s Transit Center.

The TNUCP Contact information is:
Contact Name: David Neese
Address: TDOT-Small Business Development Program
505 Deaderick Street
James K. Polk Building
Nashville, TN 37243
Telephone: 615-741-3681
Email: David. Neese@tn.gov
Website: https://www.tn.gov/tdot/civil-rights/small-business-development-program.html

The following is a description of the TNUCP:
The Tennessee Uniform Certification Program (TNUPC) is charged with the responsibility of certifying firms for the purpose of maintaining a database of certified DBEs for the U.S. Department of Transportation (U.S. DOT) grantees in the state of Tennessee, pursuant to 49 CFR Part 26. The member agencies of the TNUPC include:

- The Tennessee Department of Transportation (Civil Rights Office, Small Business Development Program)
- The airport authorities/commissions of Chattanooga, Knoxville, Memphis/Shelby County, Nashville, Smyrna, and Tri-Cities
- The public transit systems/authorities in Bristol, Chattanooga, Clarksville, Jackson, Johnson City, Kingsport, Knoxville, Memphis, Murfreesboro, and Nashville
- The Regional Transportation Authority of Middle Tennessee

Member agencies which process DBE applications and certify DBEs for the TNUPC include: 1) the public transit authorities of Chattanooga, Memphis, and Nashville; 2) the Tennessee Department of Transportation (Civil Rights Office, Small Business Development Program). The DBE objective of the TNUPC is to ensure that disadvantaged business firms have the maximum opportunity to participate in U.S. DOT assisted contracts.

**Procedures for Certification Decisions (Sections 26.83)**

**Re-certifications (Sections 26.83 (a) & (c))**

FRTA is not a certifying entity. FRTA relies on the TNUPC for certification of DBEs, certification decisions, and certification appeals.

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

FRTA is not a certifying entity. FRTA relies on the TNUPC for certification of DBEs, certification decisions, and certification appeals.

**Denials of Initial Requests for Certification (Sections 26.85)**

FRTA is not a certifying entity. FRTA relies on the TNUPC for certification of DBEs, certification decisions, and certification appeals. If a firm’s initial application to the TNUPC to be certified as a DBE is denied, the TNUPC sends a letter to the firm explaining the reasons for the denial and provides information on filing an appeal to the U.S. DOT. If an ineligibility complaint if filed to the TNUPC regarding a certified DBE and it is determined the firm may remain eligible as a DBE, the TNUPC provides information to the complainant on filing an appeal to the U.S. DOT.

**Removal of a DBE’s Eligibility (Sections 26.87)**

FRTA is not a certifying entity. FRTA relies on the TNUPC for certification of DBEs, certification decisions, and certification appeals. If a firm previously DBE certified by the TNUPC has its DBE eligibility status removed by the Appeals Committee of the TNUPC, the TNUPC provides information to the firm in question on filing an appeal to the U.S. DOT. The appeals may be sent to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
External Civil Rights Programs Division (S-33)  
1200 New Jersey Avenue, SE
Certification Appeals (Sections 26.89)
FRTA is not a certifying entity. FRTA relies on the TNUCP for certification of DBEs, certification decisions, and certification appeals. Contact information for the TNUCP is provided in the section above. The TNUCP will promptly implement any DOT certification appeal decisions affecting the eligibility of DBEs for our DOT-assisted contracting.

Subpart F – Compliance and Enforcement
Information, Confidentiality, Cooperation (Section 26.109)
FRTA will not disclose information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local laws. Information requests meeting FOIA or Tennessee Open Records requirements will be granted, but no information beyond what is permitted by these laws will be disclosed. Bids will be available for public review after bid opening; proposals will be available for public review after the winning proposal is selected.

Notwithstanding any contract provisions of state or local law, we will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without written consent of the submitter.

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

As discussed in this program in Section 26.37, FRTA will perform interim audits of contract payments to DBEs. The audits will include examination of payments by prime contractors to DBE subcontractors (review of Certification of Payment to DBE Subcontractors forms, submitted to FRTA by prime contractors) including assessment to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.

ATTACHMENTS
The TMA Group operates and manages: VanStar regional commuter vanpool program; Franklin Transit Authority; Clean Air Partnership; School Pool is Cool; and Cmuter.com
Attachment 2  Bidders List Information Form

Bidders List Information Form

Franklin Transit Authority and The TMA Group are required per 49 CFR Part 26.11 © to create and maintain a comprehensive Bidders List. This Bidders List Information Form will be used to collect bidder information used to determine the relative availability of Disadvantaged Business Enterprise (DBE) and non-DBEs, and will assist with establishing the agency’s annual DBE goal. Each Bidders List is a compilation of bidders, proposers, quoters, subcontractors, and suppliers of materials and services who have submitted bids during the advertising period of a solicitation for services. Please provide the following information:

Part A: Business Information

Business Name: __________________________________________________________

Is this business certified as a DBE under the TN Unified Certification Program? __________

NAICS Codes you are certified to do business in: ______   ______   ______   ______

Business Annual Gross Receipts:

_____ <$500,000       _____ $500,000 to $1,000,000       _____ $1,000,000 to $2,000,000

_____ $2,000,000 to $5,000,000       _____ >$5,000,000

Part B: Contact Information

Business Address: ________________________________________________________

________________________________________________________

________________________________________________________

Contact Name: ________________________________________________

Phone: _________________________________________________

Fax: _________________________________________________

Email: _________________________________________________

Part C: Signature

The undersigned hereby declares the information set forth on this page is current, complete, and accurate.

Authorized Signature: ______________________________  Date: __________________________

Printed Name: ______________________________  Title: _______________________________
Attachment 3  DBE Participation Report & Prompt Payment Certificate

Contractor Name _________________________________________________________
Project Title _____________________________________________________________
Contract # _______________Project Award Date _____________DBE Contract Goal____

<table>
<thead>
<tr>
<th>Name of DBE Subs, Manufacturers, Suppliers</th>
<th>Type of Service or Materials Provided</th>
<th>Previous Payments</th>
<th>Current Payments</th>
<th>Total Payments to Date</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Name of Non-DBE Subs, Manufacturers, Suppliers</td>
<td>Type of Service or Materials Provided</td>
<td>Previous Payments</td>
<td>Current Payments</td>
<td>Total Payments to Date</td>
</tr>
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<td>-------------------------------------------</td>
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<td></td>
<td></td>
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<td></td>
<td></td>
</tr>
</tbody>
</table>
A. Invoice Amounts to Date

B. Payments to Non-DBEs to Date

C. DBE Participation to Date (A-B/A)

Good Faith Efforts (Required when DBE Participation % to date is less than the DBE contract goal)

The undersigned hereby certifies that payments have been dispersed to all subcontractors, regardless of their tier or DBE status, within thirty (30) calendar days after receipt of payment from the Franklin Transit Authority or The TMA Group, in accordance with the terms of the contract.

Signature

Printed Name

Title

Date
Attachment 4  Site Visit of DBE Contractor

Contractor Name ________________________________________________________________
Contractor Address ____________________________________________________________
Contractor Phone Number ______________________________________________________
Contractor E-mail _____________________________________________________________
Contract Number ______________________________________________________________

Date of Site Visit _____________________________________________________________

Name of Representative Met With ______________________________________________

Contractor Records Reviewed (mark all the apply)
☐ Payroll Records
☐ Equipment Title (purchase records, etc)
☐ Supplies purchase records (required)

Name(s) of Contractor Employee(s) Interviewed ______________________________________

Observational Notes:
_________________________________________________________________________
_________________________________________________________________________
FRTA/TMA Representative Signature

_________________________________________________________________________
Contractor Representative
Attachment 5 Section 26.45: Overall Goal Calculation

FRTA’s overall goal for FY20__ is the following: ____% of the Federal Financial assistance we will expend in DOT-assisted contracts.

Methodology used to Calculate Overall Goal

Step One, Base Figure (Part 26.45 (c))

FRTA follows Part 26.45(c)(1) and uses the Tennessee UCP statewide Disadvantaged Business Enterprise Directory and the U.S. Census Bureau County Business data for Nashville-Davidson County, Williamson, Maury and Rutherford counties to determine a base figure for the relative availability of DBEs in the FRTA market.

USDOT-assisted projects/contracts are identified and applicable NAICS codes are determined from that list. The NAICS codes are used to locate the total number of certified DBEs in the TNUCP for middle Tennessee. This number is divided by the total number of firms in Davidson, Williamson, Maury and Rutherford counties.

Base figure = __________________ All firms ready, willing and able.

The data source or demonstrable evidence used to derive the numerator was:

The data source or demonstrable evidence used to derive the denominator was:

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was:

Step Two, Adjustments to Base Figures (Part 26.45(d))

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the DBE participation we would expect in absence of discrimination we had adjusted our base figure by ____%.

The data used to determine the adjustment to the base figure was:

The reason we chose to adjust our figure using this data was because:

From this data, we have adjusted our base figure to:

Public Participation

We published our goal information in these publications:

We received comments from these individuals or organizations:

Summaries of these comments are as follows:

Our responses to these comments were:
Attachment 6  Breakout of Estimated Race-Neutral & Race Conscious Participation

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

100% Race Neutral Measures - FRTA’s DBE goals are currently being achieved through 100% race-neutral measures.

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

We will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.
Attachment 7  Form 1 & 2 for Demonstration of Good Faith Efforts

**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 submits documentation demonstrating good faith efforts.

**Bidder/Proposer Information**

Name of bidder/offer’s firm: ____________________________________________________________

State Registration No. ________________________________________________________________

By: _____________________________________________________________

(signature)

Title
**Form 2: LETTER OF INTENT**

Name of bidder/offer's firm: _____________________________________________________________

Address: __________________________________________________________________________

City: ____________________________ State: ____________ Zip: ______________

Name of DBE Firm: __________________________________________________________________

Address: __________________________________________________________________________

City: ____________________________ State: ____________ Zip: ______________

Telephone: _________________________________________________________________________

Description of work to be performed by DBE firm:

________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________
________________________________________________________________________________

The bidder/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.

BY __________________________________________________________________________________________

(Signature) (Title)

If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent and Affirmation shall be null and void.
AGREEMENT FOR THE PURCHASE OF TRANSIT SERVICES
Franklin Transit Authority Contract No. 2019-0055

THIS AGREEMENT is made and entered into the 6th day of June, 2019, by and between the FRANKLIN TRANSIT AUTHORITY, hereinafter referred to in this Agreement as "AUTHORITY" and The TMA Group, hereinafter referred to in this Agreement as "CONTRACTOR".

WHEREAS, the AUTHORITY, as a municipal transit authority, created by Resolution of the City of Franklin ("CITY") Board of Mayor and Aldermen ("BOMA") on May 5, 2003, is granted full power and authority to acquire, purchase, construct, extend, improve, maintain, own and operate a system of suitable vehicles primarily for the transportation for hire of passengers and incidental activities, including, without limitations, automobiles, busses, trolleys, and vans, and other vehicles, carbons, terminals, garages, repair shops, and, other necessary buildings and lands, fixtures, bus stops, rights-of-way, and easements and all other powers enumerated in T.C.A. § 7-56-101 et seq. and all powers and things necessary, usual, or proper for such a system for the transportation for hire of passengers upon any and all streets in the CITY and upon any or all highways within Williamson County upon agreement with the County in compliance with laws, and such private charter service as the AUTHORITY deems proper, has determined that it is in the best interest of its riding public and the CITY to utilize private sector transportation to provide transit management and operations; and

NOW, THEREFORE, in consideration of the promises and agreements set forth in this Agreement, the AUTHORITY and the CONTRACTOR HEREBY AGREE as follows:

ARTICLE 1 – GENERAL WARRANTIES

Section 1.1

The CONTRACTOR hereby covenants and agrees to perform certain services for the benefit of the AUTHORITY and in consideration thereof, the AUTHORITY agrees, through the CITY's annual budgeting process, to provide a subsidy to the CONTRACTOR in accordance with the terms and conditions set forth herein. The services shall be known as "TRANSIT SERVICES" and shall operate until June 30, 2024. This contract shall commence on July 1, 2019.

Section 1.2

The CONTRACTOR represents and warrants that it is a non-profit 501(c)(3) corporation duly incorporated, validly existing, and in good standing under the laws of the State of Tennessee and is qualified to do business in Tennessee. The CONTRACTOR has all the requisite corporate powers and authority to execute, deliver, and perform its obligations under this agreement. In connection with its obligations under this Agreement, it shall comply with all applicable federal, state, and local laws and regulations and shall obtain all applicable permits and licenses.

ARTICLE 2 – COMPENSATION

Section 2.1 Compensation
The AUTHORITY shall pay the CONTRACTOR for all of the costs for providing TRANSIT SERVICES, including planning, marketing, administration, management, and grant supervision, as follows: The AUTHORITY shall pay the CONTRACTOR a set amount per month based upon the budget amount approved and authorized for TRANSIT SERVICES by the CITY.

Section 2.3 Invoices to the AUTHORITY

By the tenth (10th) day of the month, the CONTRACTOR shall submit a monthly invoice to the AUTHORITY for services performed the previous month. The AUTHORITY shall pay the CONTRACTOR within fifteen (15) days of receipt of an invoice. Monthly reports due the AUTHORITY are to be included with the invoice. The invoice shall provide a detailed accounting of the number of Vehicle-Hours provided and Revenue Vehicles used.

Section 2.4 The AUTHORITY Credits

If it is determined that the CONTRACTOR has received any payment not authorized by this Agreement, then the amount of such payment shall be deducted from the next payment due, or, if no such payment is due, said amount shall be repaid to the AUTHORITY within thirty (30) days following written demand therefore by the AUTHORITY.

ARTICLE 3 – SCOPE AND DESCRIPTION OF SERVICES

Section 3.1 TRANSIT SERVICES

During the term of this Agreement, the CONTRACTOR, acting as an independent CONTRACTOR of the AUTHORITY and not as an agent of the AUTHORITY, agrees to provide TRANSIT SERVICES according to the route maps and schedules approved by the AUTHORITY. In providing TRANSIT SERVICES, the CONTRACTOR shall:

(1) Take all steps necessary to ensure the safety and reasonable comfort and convenience of the public;

(2) Charge only such fares as may be directed by the AUTHORITY;

(3) Comply with all policies, practices, procedure, terms and conditions as may be approved by the AUTHORITY;

(4) Comply with all terms and conditions for use of federal, state, and other funds received by the AUTHORITY or the CONTRACTOR; and

(5) Comply with all applicable provisions of federal, state, and local law.

Section 3.2 Changes in TRANSIT SERVICES

A. CONTRACTOR Initiated Changes. The CONTRACTOR shall not, without the prior written approval of the AUTHORITY, initiate or permit any change to the TRANSIT SERVICES. The CONTRACTOR may propose changes to the TRANSIT SERVICES by presenting a proposal therefore in writing to the AUTHORITY at least sixty (60) days in advance of the date on which the change is proposed to take effect. The AUTHORITY shall either approve or disapprove the request, in writing, within thirty (30) days after it receives the request. Notwithstanding the foregoing, the CONTRACTOR may implement minor operational changes that will neither:

(1) Increase any Reimbursable Expenditure;
(2) Affect any fare or system for passes, transfers, interconnections, or similar programs; nor

(3) Substantially change any route or schedule if the CONTRACTOR first gives the AUTHORITY at least thirty (30) day notice of its intent to make such minor change and if the AUTHORITY has not disapproved such proposed minor change in writing within fifteen (15) day following receipt of such notice. The CONTRACTOR may, in addition, make minor operational changes of an emergency nature without the AUTHORITY approval; provided, however, that no such change shall be made that would increase any Reimbursable Expenditure and provided, further, that the CONTRACTOR shall give the AUTHORITY notice of each such minor change as soon as possible, and in no event later than twelve (12) hours after it is made.

B. AUTHORITY Initiated Route and Schedule Changes. The AUTHORITY may require changes in routes and schedules as specified in Section 3.1 above, but only on the following conditions:

(1) Unless some other notice is permitted or required or unless the CONTRACTOR shall agree to some lesser notice, the AUTHORITY shall provide the CONTRACTOR at least sixty (60) days written notice of the required change; and

(2) The AUTHORITY shall have first complied with any special procedures or standards made applicable to the required change by any applicable law or regulation or by any other agreement between the AUTHORITY and CONTRACTOR; and

(3) The AUTHORITY shall have first approved an amendment to the Approved Budget or shall otherwise have provided sufficient additional funding to fairly reflect any increase in the Reimbursable Expenditures caused by the required change.

In the event the CONTRACTOR disputes the AUTHORITY’s compliance with either Paragraph 3.2B(2) or 3.2B(3) above, the CONTRACTOR may request a review of the matter by the BOMA. If the BOMA determines that there is no failure by the AUTHORITY to comply with either Paragraph 3.2B(2) or 3.2B(3) above, the CONTRACTOR shall then implement the required change not later than the expiration of the notice period required pursuant to Paragraph 3.2B(1) above, subject, however, to the CONTRACTOR’s remedies as set forth in Article 13 of this Agreement.

C. Other AUTHORITY Initiated Changes. Except for changes in routes and schedules, the AUTHORITY may require any change in the TRANSIT SERVICES specified in Section 3.1 above upon reasonable written notice to the CONTRACTOR.

D. AUTHORITY Right to Withhold Approval. Nothing in this Section 3.2 shall be construed to require the AUTHORITY to approve any change to the TRANSIT SERVICES specified in Section 3.1, and the AUTHORITY may withhold its approval of any such change, at its sole discretion.

Section 3.3 Other Services

Throughout the Agreement Term, the CONTRACTOR shall provide all ancillary and supporting services necessary or appropriate to providing the TRANSIT SERVICES and to complying with the requirements of this Agreement, including the following services:

(1) The CONTRACTOR shall maintain all equipment and supplies used in providing or supporting the TRANSIT SERVICES in first-class condition and shall specifically comply with the equipment maintenance responsibilities;
(2) The CONTRACTOR shall comply with the reporting and record keeping requirements set forth in this Agreement; and
(3) The CONTRACTOR shall comply with its obligations with respect to accounting and budgeting as set forth in this Agreement.

Section 3.4 Real Property and Facilities

Unless otherwise expressly provided in this Agreement, the CONTRACTOR shall, in providing the TRANSIT SERVICES and Other Services, utilize the garages, yards, and related storage facilities, as specified and authorized by the AUTHORITY.

Section 3.5 Permitted Variations in TRANSIT SERVICES Due to Force Majeure

The CONTRACTOR shall not be in default of its obligation to provide TRANSIT SERVICES to the extent that it is unable to provide such TRANSIT SERVICES as a result of abnormally severe weather or road conditions, strikes or other labor stoppages, unavailability of sufficient Revenue Vehicles through no fault of the CONTRACTOR, and other events and conditions that are beyond the reasonable ability of the CONTRACTOR to control or remedy and that render provision of such TRANSIT SERVICES impossible or not reasonably feasible. In any such case, the CONTRACTOR shall provide such modified or reduced TRANSIT SERVICES as are practicable under the circumstances and shall use all reasonable efforts to restore full TRANSIT SERVICES in accordance with this Agreement at the earliest possible time.
Immediately upon the occurrence of, or the threat of the imminent occurrence of, any such event or condition, and prior to implementing any reduced or modified service, the CONTRACTOR shall notify the AUTHORITY by telephone, with written confirmation as soon as possible thereafter, of:
(1) The nature of the event or condition;
(2) The actual or expected time of the occurrence of the event or condition and its expected duration;
(3) The impact of the event or condition on TRANSIT SERVICES;
(4) The modified or reduced service that the CONTRACTOR proposes to provide during the continuation of the event or condition;
(5) The CONTRACTOR’s plan to notify potential users of the TRANSIT SERVICE of any disruption that may result; and
(6) The steps the CONTRACTOR proposes to take to restore full service.

Section 3.6 Contract Monitoring

A. The AUTHORITY will appoint a Key Contact/ Project Manager to work with the CONTRACTOR.
B. The AUTHORITY will work with the CONTRACTOR to establish and monitor contract performance annually, based on Service Delivery, Customer Service, Quality Assurance, Cost Effectiveness, and Productivity.
(1) Service Delivery will assess road calls, miles between accidents, and service interruptions.
(2) Customer Service will evaluate complaints and commendations, passenger approval, and marketing outreach.
(3) Quality Assurance will assess preventative maintenance, bus cleanliness, and safety.
(4) Cost Effectiveness will have as performance standards, passengers per vehicle hour, average fare, revenue hours, and total vehicle hours.

ARTICLE 4 – EQUIPMENT
Section 4.1 Provision of Equipment by the AUTHORITY or the CITY

A. The AUTHORITY Rights with Respect to CITY Vehicles and Other CITY Equipment. This Agreement applies to all CITY Equipment provided by the AUTHORITY to the CONTRACTOR at any time. The AUTHORITY reserves the absolute right, in its sole discretion, to: (1) determine the number and type of CITY Vehicles and other CITY Equipment to provide to the CONTRACTOR; (2) substitute or replace any CITY Vehicles or Other CITY Equipment provided to the CONTRACTOR; and (3) direct the return to CITY or its designee of any or all CITY Vehicles or other CITY Equipment at any time, provided, however, that in the absence of fault by the CONTRACTOR or other good cause, the AUTHORITY shall not take action under this Paragraph that would have the effect of preventing or materially and adversely affecting the ability of the CONTRACTOR to provide the TRANSIT SERVICES and other services.

B. The CITY Equipment Provided. The AUTHORITY will provide or has already provided the CONTRACTOR with the CITY Revenue and Non-Revenue Vehicles listed in Exhibit A. The CONTRACTOR acknowledges that the CITY Revenue Vehicles listed in Exhibit A, together with the CONTRACTOR Vehicles listed in Exhibit A, if any, are adequate and sufficient to provide and support the TRANSIT SERVICES. The CONTRACTOR further acknowledges that it has, in addition, received various items of Other CITY Equipment from the AUTHORITY, and the CONTRACTOR agrees to comply with all the AUTHORITY procedures for handling such Other AUTHORITY Equipment.

C. Inventory and Documentation. The CONTRACTOR agrees to cooperate fully with the AUTHORITY in developing and maintaining an accurate inventory of all CITY Equipment from time to time in the possession of the CONTRACTOR. The CONTRACTOR shall complete and process all documentation necessary to evidence and record the receipt, possession, return, or transfer of any CITY Equipment coming into, being in, or leaving its possession. Copies of all such documentation, with respect to CITY Vehicles shall be attached to and become part of Exhibit A.

D. No Consideration. The CONTRACTOR shall not be required to pay any separate consideration for the use of CITY Equipment during the Agreement Term.

E. CONTRACTOR Acceptance of CITY Equipment. The CONTRACTOR shall accept delivery of CITY Equipment at such times and places within the territory of the CITY as the AUTHORITY shall designate upon notice to the CONTRACTOR that such Equipment is available for delivery.

F. Training of CONTRACTOR Personnel. The AUTHORITY’s contract for the purchase of Equipment requires the manufacturer of such items to provide training in the use of Equipment to personnel of the CITY and the CONTRACTOR. The CONTRACTOR shall, upon notice from the AUTHORITY, require its personnel to attend such training.

G. CITY Equipment Returns and Substitutions. Any CITY Equipment that the AUTHORITY designates to be returned or transferred shall, upon reasonable notice, be delivered by the CONTRACTOR at the time and to the place designated by the AUTHORITY. The CONTRACTOR also shall accept delivery of any substitute CITY Equipment at the time and to the place designated by the AUTHORITY. All terms and conditions of this Agreement shall apply to such
substitute CITY Equipment. This right of the AUTHORITY is limited by the terms of model Paragraph 4.1 A (3), which provide that the AUTHORITY cannot prevent or materially adversely affect the CONTRACTOR's provision of TRANSIT SERVICES and Other Services.

H. The AUTHORITY Right to Repossess CITY Equipment. Upon the failure of the CONTRACTOR to return or deliver any CITY Equipment as directed by the AUTHORITY, or if the CONTRACTOR fails to use, repair, or maintain any CITY Equipment as required by this Agreement, the CONTRACTOR shall permit the AUTHORITY, without demand, legal process, or a breach of the peace, to enter any premises under the control of the CONTRACTOR where CITY Equipment is or may be located and to take possession of and remove the CITY Equipment. The CONTRACTOR shall not prosecute or assist in the prosecution of any claim, suit, action, or other proceeding arising out of any such repossession by the AUTHORITY. The CONTRACTOR shall reimburse the AUTHORITY for any and all costs incurred by the AUTHORITY in connection with actions taken by the AUTHORITY, pursuant to this subsection. Such costs shall not be Reimbursable Expenditures under this Agreement.

I. CITY Equipment Inspection. The AUTHORITY shall have the right to inspect any and all CITY Equipment or cause any or all CITY Equipment to be inspected at any time, with or without prior notice to the CONTRACTOR, provided, however, that unless the AUTHORITY determines, in its sole discretion, that emergency conditions or factors affecting safety or security require otherwise. The AUTHORITY shall give at least twenty-four (24) hour notice of any such inspection. The AUTHORITY shall also have the right to demand, from time to time, a written statement from the CONTRACTOR setting forth the condition of CITY Equipment or any part of it. The CONTRACTOR shall furnish such a statement to the AUTHORITY within ten (10) days after receipt of the AUTHORITY's demand therefore. Should the AUTHORITY or its designee determine, in its sole discretion, that any CITY Equipment has not been maintained in accordance with this Agreement, the AUTHORITY or its designee shall report all deficiencies to the CONTRACTOR in writing. Except for safety-related deficiencies, which shall be corrected as soon as reasonably possible and prior to placing the Vehicle in service, the CONTRACTOR shall have thirty (30) days to correct deficiencies.

J. Return of CITY Equipment and Related Records Upon Termination. Immediately following the Agreement Term, the CONTRACTOR shall surrender and deliver to the AUTHORITY and the CITY all CITY Equipment and related records as required by Section 13.5 of this Agreement.

K. Title to CITY Equipment. The CONTRACTOR acknowledges and agrees that the CITY owns all the CITY Equipment. The CONTRACTOR further acknowledges that, pursuant to Resolution, the CITY authorized the AUTHORITY to "acquire, purchase, construct, extend, improve, maintain, own and operate a system of suitable vehicles primarily for the transportation for hire of passengers and incidental activities, including without limitations, automobiles, buses, trolleys, and vans and other vehicles, carbons, terminals, garages, repair shops, and other necessary buildings and lands, fixtures, bus stops, rights-of-way, and easements and all other powers enumerated in T.C.A. § 7-56-101 et seq. and all powers and things necessary, usual or proper, for such a system for the transportation for hire of passengers upon any and all streets in the CITY and upon any or all highways and streets within Williamson County upon agreement with the County in compliance with its laws, and such private charter service as the Authority deems proper". Nothing contained in this Agreement shall affect the CITY's absolute ownership of and
title to the CITY Equipment. Such ownership and title being hereby expressly reserved to and retained by the CITY. The CONTRACTOR shall not:

1. Obtain, acquire, or otherwise be construed to own any property or other interest in the CITY Equipment except the right to use it for the purposes and on the conditions stated in this Agreement during the Agreement Term;
2. Sell, assign, or otherwise grant any party any right to own, use, or possess the CITY Equipment;
3. Permit the CITY Equipment, or any part of it, to pass from their possession and control of the CONTRACTOR, unless directed to do so in writing by the AUTHORITY; or
4. In any manner, allow or permit the CITY Equipment, or any part of it, to be pledged, seized, or held for any tax, debt, lien, or other obligation. Should the CITY Equipment, or any part of it, become subject to or encumbered by any tax, debt, lien, or other obligation during the Agreement Term, or before the actual delivery of the CITY Equipment to the CITY after the Agreement Term, the CONTRACTOR shall, subject to its right to, in good faith, protest any such tax, debt, lien, or other obligation, promptly payer discharge such tax, debt, lien, or other obligation, and relieve such CITY Equipment from the encumbrance thereof.

L. Licensing and Registration. All CITY Vehicles shall be licensed and registered by the CITY in the name of the CITY.

M. Warranty. The AUTHORITY declares that:

1. Neither the CITY nor the CONTRACTOR is the manufacturer of the CITY Equipment or manufacturer’s agent, and neither the CITY nor the CONTRACTOR makes any express or implied warranty of any nature regarding the CITY Equipment, including, but not limited to: (a) its merchant ability or fitness for any particular purpose; (b) its design or condition; (c) its workmanship; (d) its freedom from latent defects; (e) its compliance with the requirements of any law, rule specification, or contract; or (f) its non-infringement of any patent, trademark, or license;

2. Provided that the CITY or the manufacturer has supplied required warranty documents to the CONTRACTOR, the CONTRACTOR shall take all actions required to preserve any and all manufacturers’ warranties regarding the CITY Equipment;

3. This Agreement shall not operate to release any rights of the CITY or the CONTRACTOR against any person not a party hereto, including the manufacturers of the CITY Equipment.

N. Use of CITY Equipment Only. Unless otherwise expressly provided in this Agreement, the CONTRACTOR shall, in providing the TRANSIT SERVICES and Other Services, employ only Equipment specified in this agreement.

Section 4.2 Maintenance of CITY Equipment by CONTRACTOR

A. Maintenance Requirements. At all times during the Agreement Term, the CONTRACTOR shall:

1. Maintain all CITY Equipment in good mechanical conditions in conformity with all applicable safety practices, laws, and regulations;
2. Maintain all CITY Equipment in accordance with the terms and provisions of this Agreement, all maintenance policies, practices, procedures, conditions, and requirements of the CITY, and all manufacturers’ maintenance schedules and warranty requirements;
(3) Perform all preventative maintenance required by the CITY;
(4) Keep both the exterior and interior of all CITY Vehicles neat, clean, and in first-class condition at all times; and
(5) Be responsible to ensure that all CITY Revenue Vehicles are maintained at all times so as to meet the requirements of the relevant agencies.

B. Maintenance Records. CONTRACTOR shall prepare and maintain accurate records relating to all maintenance work performed by or for the CONTRACTOR on all CITY Equipment. All such records shall comply with the provisions of this Agreement and with all applicable CITY policies, practices, procedures, conditions, and requirements. The CONTRACTOR shall maintain a separate maintenance file for each CITY vehicle containing all maintenance records pertaining thereto. The CONTRACTOR shall also complete, maintain, and transmit to the AUTHORITY all maintenance forms and any other records requested by the AUTHORITY, including, without limitation, vehicle maintenance records, fuel consumption records, and all records required under the CITY's Preventive Maintenance Program.

C. Storage of CITY Equipment. The CONTRACTOR shall store all CITY Equipment as directed by the AUTHORITY at the suitable location identified by the AUTHORITY. CITY Vehicles shall not be stored outdoors without the express prior written approval of the AUTHORITY and then only in accordance with such conditions as the AUTHORITY may require.

D. Fare Boxes. Except as expressly approved in writing by the AUTHORITY, the CONTRACTOR shall utilize only fare boxes and other electronic ticket-reading equipment provided by the AUTHORITY. The CONTRACTOR shall install and maintain such fare boxes and ticket-reading equipment in good condition in all Revenue Vehicles.

Section 4.4 Services to be Provided by the CITY

A. Bus Stop Sign and Signposts. The AUTHORITY will provide and install sufficient bus stop signs and signposts to cover the routes.

B. Bus Shelters. The AUTHORITY will maintain bus shelters and agrees to install bus shelters as funding and conditions allow.

C. Manufacturers' Warranties. The AUTHORITY will provide attended manufacturers' warranties on Vehicles identified in Exhibit A.

D. Mapping and GIS Assistance. The AUTHORITY will provide the CONTRACTOR with mapping and GIS assistance to carry out route planning.

ARTICLE 5 – REAL PROPERTY AND FACILITIES

Section 5.1 Use of Real Property and Facilities

The CONTRACTOR agrees to, and shall, use the Real Property and Facilities, or the portions thereof, as provided by the AUTHORITY for the operation of the CITY Transit System and to use these solely for the purpose of providing TRANSIT SERVICES and Other Services. The listing of all such property and facilities will be included as an Exhibit B to this agreement. The parties have entered into separate leases
or other agreements governing the CONTRACTOR's right to possess and use any land or facilities owned by the CITY. Its term and provisions should, of course, be consistent with the purchase of service agreement. The lease and service agreement should each include a cross-default provision.

Section 5.2 Maintenance of Real Property and Facilities

The CONTRACTOR agrees to maintain the Real Property and Facilities in first-class condition for their intended purposes throughout the Agreement Term.

ARTICLE 6 – EMPLOYEES

Section 6.1 Compliance with Federal, State, and Local Laws

The CONTRACTOR agrees that, with respect to persons employed by it to provide TRANSIT SERVICES and Other Services, it will comply with all applicable federal, state, and local labor laws including, but not limited to, any and all laws relating to the minimum wages to be paid to its employees, limitations upon the employment of minors, minimum fair wage standards for minors, the payment of wages due employees, and all applicable regulations established to protect the health and safety of employees, passengers, and the public at large. The CONTRACTOR also agrees to provide the employee protection required under Section 13(c) of the Federal Transit Act, as amended, 49 U.S.C. Section 5333(b), and for persons employed by it to provide TRANSIT SERVICES and Other Services.

Section 6.2 Employment of Personnel

A. General. The CONTRACTOR shall be responsible for the selection, training, scheduling, supervision, discipline, termination, and all other functions related to personnel required to perform the CONTRACTOR's obligations under this Agreement.

B. Management. The CONTRACTOR shall provide competent and professional management in accordance with CITY policies, practices, procedures, and standards. If such managerial services are not being provided, the AUTHORITY may send the CONTRACTOR a written notice requesting the CONTRACTOR to take corrective action within twenty-one (21) days. If the CONTRACTOR fails to comply with such a request or if the action taken is unsatisfactory, the AUTHORITY shall no longer be obligated to pay salaries, fringe benefits, or travel and related expenses incurred in connection with such managerial services. In the event such failure to provide managerial services cannot be cured within said twenty-one (21)-day period, notwithstanding diligent and continuous effort by the CONTRACTOR, and CONTRACTOR shall have promptly commenced to cure the failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such failure shall be extended for such time as may be necessary for curing such failure with diligence and continuity.

C. Employees. The CONTRACTOR shall employ only such persons as are competent and qualified to provide TRANSIT SERVICES and Other Services in accordance with the requirements of this Agreement and CITY policies, practices, procedures and standards. All employees shall meet all applicable qualifications established by federal, state, and local laws and regulations. Drivers shall display proper courtesy toward passengers and maintain a neat and clean appearance. The CONTRACTOR shall comply with all Federal requirements relating to drug and alcohol testing.
The CONTRACTOR shall participate in driver training programs, if any, established by the CITY or the AUTHORITY during the Agreement Term and shall comply with driver and safety standards.

Section 6.3 Employment Contracts

The CONTRACTOR may deal with, and enter into written agreements with, its employees.

ARTICLE 7 – NONDISCRIMINATION, EQUAL EMPLOYMENT, AND BUSINESS OPPORTUNITY

Section 7.1 Compliance with Federal, State, and Local Laws


Section 7.2 Equal Employment Opportunity

The CONTRACTOR shall comply with all of the affirmative action, equal employment opportunity, and minority business enterprise requirements.

ARTICLE 8 – REPORTS, RECORDS, AND INSPECTIONS

Section 8.1 Records

A. Creation and Maintenance. The CONTRACTOR shall create and maintain at the location specified in Section 5.1 of this Agreement, or at such other location as the AUTHORITY may approve in writing, full, accurate, and complete records of all TRANSIT SERVICES and Other Services performed, all time spent, all materials, equipment, and supplies purchased, and all costs incurred in the performance of the TRANSIT SERVICES and Other Services pursuant to this Agreement, including all records required by this Agreement, or any applicable law or regulation.

B. Disposal or Destruction. Unless the AUTHORITY shall consent in writing to the destruction of any such records, and except for records required to be delivered to the AUTHORITY at the end of the Agreement Term, the CONTRACTOR shall make said records available for review, inspection, and audit in accordance with Section 8.2 below during the entire Agreement Term and for three (3) years thereafter, or such longer period as may be required by law or any applicable grant, or in the alternative, may turn over all such documents to the AUTHORITY at the end of the Agreement Term, provided that prior to the disposal or destruction of any such record by the CONTRACTOR following said period, the CONTRACTOR shall give notice to the AUTHORITY of any record or records to be disposed of or destroyed and the intended date of disposal or destruction, which shall be at least sixty (60) days after the effective date of such notice. The AUTHORITY shall have sixty (60) days after receipt of any such notice to give notice to the CONTRACTOR not to dispose of or destroy said record or records and to require the
CONTRACTOR to deliver such record or records to the AUTHORITY or its designee, at the AUTHORITY’s expense, on a confidential basis if appropriate.

Section 8.2 Inspections and Audits

A. **Right of the AUTHORITY.** The AUTHORITY shall have the right, with or without prior notice to the CONTRACTOR, to review, inspect, and audit all TRANSIT SERVICES and Other Services, performed pursuant to this Agreement, and all information and records related thereto, at all reasonable times during and following the performance of TRANSIT SERVICES and Other Services.

B. **Performance of inspections and Audits.** The AUTHORITY shall perform such review, inspection, or audit in a manner that will not unduly delay or interfere with the CONTRACTOR’s performance under this Agreement. The CONTRACTOR shall cooperate with the AUTHORITY in any such review, inspection, or audit. The AUTHORITY may perform any such review, inspection, or audit through an officer, employee, or any designated agent or independent contractor.

**ARTICLE 9 – INSURANCE AND RISK MANAGEMENT**

Section 9.1 Insurance Required

The CONTRACTOR shall, at all times material to this Agreement, maintain adequate liability and worker’s compensation insurance in amounts determined by the CITY and its insurance provider. The expense of said insurance to the CONTRACTOR shall be considered a Reimbursable Expense.

Section 9.2 Additional Insureds

All Required coverage shall name the following persons as additional insured parties: the AUTHORITY, the CITY and its boards, and the CONTRACTOR and their employees, agencies, and officers for their individual interests in the joint venture. The coverage afforded the additional insureds shall be primary insurance for the additional insureds with respect to claims arising out of operations performed by or on behalf of CONTRACTOR. If the additional insureds have other insurance that is applicable to the loss, such other insurance shall be on an excess or contingent basis. The amount of the insurance companies’ liability under the insurance policies the CONTRACTOR maintains shall not be reduced by the existence of such other insurance.

Section 9.3 Insurance Companies and Policies

All Required coverage shall be provided by insurance companies acceptable to and approved by the AUTHORITY. Required coverage may be in any combination of primary, excess, and umbrella policies. Any excess or umbrella policy must provide excess coverage over underlying insurance on a following-form basis such that when any loss covered by the primary policy exceeds the limits under the primary policy, the excess or umbrella policy becomes effective to cover such loss. The CONTRACTOR shall furnish to the AUTHORITY two (2) copies of a certificate of insurance and one (1) copy of an insurance policy for each Required Coverage. Each such certificate and policy shall be in a form satisfactory to the AUTHORITY and shall provide that no change, modification, or cancellation of the insurance represented
by it shall become effective until the expiration of thirty (30) days after written notice thereof shall have been given by the insurance company to the AUTHORITY.

Section 9.4 Subcontractor Insurance

Unless otherwise approved by the AUTHORITY, the CONTRACTOR shall not allow any subcontractor to commence or continue any part of the TRANSIT SERVICES or Other Services until and unless such subcontractor provides and has in force insurance coverage equal to those required of the CONTRACTOR by this Article.

Section 9.5 Participation Required

CITY Vehicles used in the provision of TRANSIT SERVICES pursuant to this Agreement will be in the CONTRACTOR's insurance program. The CONTRACTOR will provide coverage for the vehicles and liability coverage for the AUTHORITY. For their CITY-owned vehicles, the CITY agrees to investigate and defend in cases of liability or property damage arising out of the provision of TRANSIT SERVICES and Other Services pursuant to this Agreement.

Section 9.6 Reporting Accidents and Potential Claims

The CONTRACTOR shall immediately notify the AUTHORITY and the CITY of any incidents that have resulted, or may result, in property damage or bodily injury.

Section 9.7 Claims Administration and Defense

The CONTRACTOR shall, and shall require its employees to, cooperate with and assist the AUTHORITY, the CITY, and any claims service agencies, investigators, and attorneys employed by or on behalf of the CITY in the administration, investigation, and defense of any and all claims for bodily injury or property damage asserted against the CITY or the CONTRACTOR arising out of the provision of TRANSIT SERVICES or Other Services pursuant to this Agreement. The CONTRACTOR's failure to comply with the requirements of this section shall relieve the CITY of any and all obligations that the CITY may have under this Article 9.

Section 9.8 Loss Prevention

The CONTRACTOR shall, upon written notice from the AUTHORITY specifying and documenting claims or other evidence of incompetence, inattention, carelessness, or other fault on the part of the CONTRACTOR or any of the CONTRACTOR's employees, promptly take all lawful and reasonable steps to prevent claims or losses as a result of such incompetence, inattention, carelessness, or other fault. This section shall not, however, be construed to require the AUTHORITY to give any such notice or to require the CONTRACTOR to take any action in violation of its obligations under any labor agreement or other employment contract.

Section 9.9 Litigation Against the CONTRACTOR

If, during the term of this Agreement, any lawsuits or proceedings are filed or initiated against the CONTRACTOR or any subcontractor or supplier of the CONTRACTOR, before any court, commission,
board, bureau, agency, unit of government or subunit thereof, arbitrator, or other instrumentality, that may materially affect or inhibit the ability of the CONTRACTOR to perform its obligations under, or otherwise to comply with, this Agreement, the CONTRACTOR shall promptly deliver a copy of the complaint or charge related thereto to the AUTHORITY and shall thereafter keep the AUTHORITY fully informed concerning all aspects of such lawsuit or proceeding.

ARTICLE 10 – INDEMNIFICATION

Section 10.1 General

Except as expressly provided in Article 9 of this Agreement, the CONTRACTOR agrees to assume liability for and to indemnify and hold harmless the AUTHORITY, its board members, officers, employees, agents, and attorneys from and against any and all liabilities, losses, damages, costs, payments, and expenses of every kind and nature (including attorneys' fees and disbursements) ("Liabilities") as a result of claims, demands, actions, suits, proceedings, judgments, or settlements ("Claims") arising out of, or alleged to have arisen out of, or in any way relating to, or alleged to be relating to, the negligence of the CONTRACTOR, or the execution, performance, nonperformance, or enforcement of this Agreement, including the enforcement of this indemnification provision, upon notice from the AUTHORITY or the CITY of any such liability or claim that the AUTHORITY or the CITY believes to be covered by this section.

Section 10.2 CONTRACTOR’s Damages

Except as expressly provided in Article 9 of this Agreement, neither the AUTHORITY nor the CITY shall be responsible to the CONTRACTOR or to any of its officers, employees, agents, or attorneys for any loss of business or other damage caused by an interruption of TRANSIT SERVICES, or for the time lost in repairing or replacing any CITY Equipment, or for any loss, injury, or damage arising out of or relating to the AUTHORITY’s or the CITY’s failure to deliver CITY Equipment, or for any other losses or damages sustained by the CONTRACTOR hereunder. Except as expressly provided in Article 9 of this agreement, neither the AUTHORITY nor the CITY assumes liability or responsibility for any acts or omissions of the CONTRACTOR, or of the CONTRACTOR’s officers, employees, agents or attorneys, or for any property of the CONTRACTOR or any other person that is damaged, lost, or stolen in the performance, or as a result of the performance, of this Agreement.

ARTICLE 11 – BUDGET AND ACCOUNTING

Section 11.1 Transit and Other Services Revenue

A. Collection. The CONTRACTOR shall comply with CITY policies, practices, and procedures relating to the collection, security, accounting, and remittance of all Transit and Other Service Revenues.

B. Retention by the CONTRACTOR. All Transit and Other Services Revenue collected during any month shall be retained by the CONTRACTOR, accounted for in the monthly report for the month during which it was collected, and shown on the monthly income and expense statement.

Section 11.2 Accounting and Reporting Standards
The CONTRACTOR shall maintain its books and records and shall prepare, maintain, and file reports relating to this Agreement and TRANSIT SERVICES and Other Services in accordance with generally accepted government accounting principles, Section 15 of the Federal Transit Act, and any documentation submitted by the CONTRACTOR, and approved by the AUTHORITY, in support of the fees paid to the CONTRACTOR. In case of any conflict in the aforesaid standards, the CONTRACTOR shall seek specific direction from the AUTHORITY and, pending receipt of such direction, shall comply with that standard that most fairly, accurately, and completely records and reports the and effectively implement the approved plan or plans. In the event of the AUTHORITY non-approval, the AUTHORITY shall either direct the CONTRACTOR to submit a new or revised plan of corrective action for CITY's approval within a stated time or direct CONTRACTOR to implement a plan of corrective action developed by the AUTHORITY, and the CONTRACTOR shall comply with such directive.

Section 11.3 Budget Amendments

A. Budget Amendments Requested by the CONTRACTOR. The CONTRACTOR may make a written request for an amendment to the Approved Budget when, in the opinion of the CONTRACTOR, circumstances beyond the control of the CONTRACTOR or circumstances not known or reasonably ascertainable prior to the beginning of the Agreement Term render it essential that the Approved Budget be amended. The AUTHORITY shall consider such requests in good faith; however, even in such circumstances, the AUTHORITY shall be under no obligation whatsoever to approve any such request. The CONTRACTOR acknowledges that limitations on the AUTHORITY's own funding and other obligations of the CITY will make it difficult or impossible for the AUTHORITY to approve any amendment to the Approved Budget that results in an increase of the Approved Budget Maximum and that any Approved Budget amendment is therefore likely to be limited to transfers between Line Items. Notwithstanding the foregoing, but subject to the availability of CITY funds, neither the AUTHORITY nor the CITY shall unreasonably refuse to approve any CONTRACTOR request for an amendment to the Approved Budget when such amendment is limited to the reimbursement of materially additional costs incurred by the CONTRACTOR as a direct result of significant changes in operating practices directed by the AUTHORITY or the CITY after approval of the Approved Budget.

B. Budget Amendments Initiated by the CITY. Except when any other agreement between the AUTHORITY and the CONTRACTOR provides otherwise, the CITY may unilaterally require an amendment to the Approved Budget in any of the following circumstances:

(1) When the funds available to the AUTHORITY for payments under this Agreement are insufficient to fully fund the Approved Budget Maximum;

(2) When circumstances beyond the reasonable control of the AUTHORITY, not known or reasonably ascertainable at the beginning of the Agreement Term, require a reduction in the Approved Budget Maximum; or

(3) When a change in routes or schedules authorized pursuant to Section 3.2B, or any other change in the TRANSIT SERVICES and Other Services to be provided pursuant to this Agreement, results in a saving Reimbursable Expenditures, but only in the amount of such savings.

Section 11.4 Capital Expenditures
A. **Capital Expenditures.** Capital Expenditures for the purposes of this Agreement shall be defined as expenditure in excess of $25,000 for the purpose of acquiring or improving real property, buildings, or equipment.

B. **Prior Approval of Capital Expenditures Required.** Notwithstanding the availability of funds in the Approved Budget, the CONTRACTOR shall not make, or become obligated to make, any Capital Expenditure in excess $25,000 for any single item without first obtaining the approval of the AUTHORITY pursuant to this subsection. Any such Capital Expenditure made or obligated without such prior approval shall be the sole responsibility of the CONTRACTOR, and no payment under this Agreement shall be sought or made with respect to such Capital Expenditure.

C. **Approval Procedures.** Except in cases of emergency, approval for Capital Expenditures shall be requested by the CONTRACTOR in writing. Such requests shall be made as far as possible in advance of the date when the CONTRACTOR desires to make or to become obligated for such Capital Expenditures. Such requests shall describe the purpose of the Capital Expenditure and the necessity therefore with particularity. After receiving all information that it deems necessary to evaluate any such request and the available funding options, the AUTHORITY shall approve or disapprove the request in writing. In any case of emergency where delay of a Capital Expenditure that could not have reasonably been foreseen would result in an unacceptable interference with or disruption of TRANSIT SERVICES or Other Services or would create a threat of personal injury or property damage, the CONTRACTOR may request the AUTHORITY approval by telephone, followed by a confirming written request. The AUTHORITY shall respond to each such request as soon as reasonably feasible.

**ARTICLE 12 – TERM**

**Section 12.1 Term**

The term of this Agreement shall be five (5) years.

**Section 12.2 Termination of Impossibility of Performance**

A. **Basis for Impossibility.** This Agreement may be terminated, in whole or in part, upon ninety (90) days written notice given by the AUTHORITY to the CONTRACTOR in the event that federal, state, local, or any other funding source fails in any fiscal year to appropriate or otherwise make available sufficient funds, as determined in the sole discretion of the AUTHORITY, to cover payments to be made to the CONTRACTOR pursuant to Article 12 hereof, or if Equipment necessary to perform the TRANSIT SERVICES and Other Services hereunder is unavailable for any reason, as determined by the sole discretion of the AUTHORITY.

B. **Termination During or After Performance.** The termination of this Agreement shall not be in any manner prevented or affected by the fact that the CONTRACTOR may have already partially or fully performed its obligations under this Agreement in respect to any unpaid part or parts of this Agreement by the time it is determined by the AUTHORITY that it will be unable to pay the remaining unpaid part or parts of this Agreement.

**Section 12.3 Termination for Contractor Default**
This agreement shall be terminated, and the Agreement Term shall end, thirty (30) days after written notice of such termination given by the AUTHORITY to the CONTRACTOR in the event that the CONTRACTOR shall, for any reason, other than as specified in Section 3.5 of this Agreement: cancel, eliminate, or reduce any route or diminish service or scheduling along any route, except for changes approved by the AUTHORITY, minor operational changes made pursuant to Section 3.2 of this Agreement, and changes due to normal seasonal route rescheduling identical to such rescheduling in the calendar year prior to the Agreement Term or failure to file or implement a plan of corrective action when required to do so. The AUTHORITY may also terminate this contract for any breach by the CONTRACTOR that is incurred after fifteen (15) days, as provided in Section 12.5.

Section 12.4 Remedies

In the event of a breach or an alleged breach of this Agreement by either party, either party may, by suit, action, mandamus, or any other proceeding, in law or in equity, including specific performance, enforce or compel the performance, or recover damages for nonperformance, of this Agreement, or both. Any cost or expense associated with pursuing any such remedy shall not be a Reimbursable Expenditure under this Agreement if the CONTRACTOR is the prevailing party in such litigation. Venue of any action to enforce or interpret this Agreement shall be in Williamson County, Tennessee.

Section 12.5 Notice and Cure

Neither party may exercise the right to bring any suit, action, mandamus, or any other proceeding pursuant to this Agreement without first providing written notice to the other party of the breach or alleged breach, and allowing a period of fifteen (15) days for the curing of said breach or alleged breach; provided, however, that in the event such violation or failure cannot be cured within said fifteen (15) day period notwithstanding diligent and continuous effort by the party receiving notice, and said party shall have promptly commenced to cure the violation or failure and shall have thereafter prosecuted the curing of same with diligence and continuity, then the period for curing such violation or failure shall be extended for such period as may be necessary for curing such violation with diligence and continuity.

ARTICLE 13 – COVENANTS AND REPRESENTATIONS

Section 13.1 General

The CONTRACTOR hereby makes the covenants and representations with and to the AUTHORITY as described in this Article and hereby agrees to abide by each and every one of them.

Section 13.2 Existence and Power

The CONTRACTOR is a duly organized and validly existing community non-profit organization, in good standing under the laws of the State of Tennessee, and has the legal power and authority to provide, engage in, and carry out the TRANSIT SERVICES and Other Services. The CONTRACTOR shall maintain its identity as a community non-profit and shall make no attempt to cause its existence to be abolished during the Agreement Term.

Section 13.3 Authorization
The CONTRACTOR has been duly authorized to execute this Agreement by its Board of Directors, and the execution and delivery of this Agreement by all of the parties signatory hereto shall constitute a valid and binding obligation of the CONTRACTOR, enforceable in accordance with its terms, and the making of and compliance by the CONTRACTOR with the terms and conditions of this Agreement will not result in any breach or violation of, or default under, any judgment, decree, mortgage, contract, agreement, indenture, or other instrument applicable to the CONTRACTOR.

Section 13.4 Approvals Received

All such approvals, consents, permits, licenses, certificates, authorizations, or modifications as may be required to permit the performance by the CONTRACTOR of its obligations under this Agreement have been obtained from the appropriate governmental authorities or other persons or entities.

Section 13.5 No Material Litigation

No litigation, investigation, or proceeding of or before any court, commission, bureau, agency, unit of Government or subunit thereof, arbitrator, or other instrumentality is pending or, to the knowledge of the CONTRACTOR, threatened by or against the CONTRACTOR, or against any of its properties or revenues: (a) with respect to this Agreement, or (b) that is reasonably likely to have a material adverse effect on the operations, property, or financial condition of the CONTRACTOR.

Section 13.6 No Default

The CONTRACTOR is not in default under or with respect to any obligation in any respect that could be materially adverse to the business, operations, property, or financial condition of the CONTRACTOR or that is reasonably likely to materially adversely affect the ability of CONTRACTOR to perform its obligations under this Agreement.

Section 13.7 No Burdensome Restrictions

No obligation of the CONTRACTOR and no requirement of law materially adversely affect, or insofar as the CONTRACTOR may reasonably foresee, may so affect, the business, operations, property, or financial condition of the CONTRACTOR or the ability of the CONTRACTOR to perform its obligations under this Agreement.

Section 13.8 No Sale, Lease, or Encumbrance

The CONTRACTOR will not sell, lease, loan, mortgage, or in any manner dispose of the CITY Equipment or the Real Property, or any improvements or additions thereto, during the Agreement Term.

Section 13.9 Payment Obligations

The CONTRACTOR shall pay and discharge all of its obligations and indebtednesses with respect to the TRANSIT SERVICES and Other Services and with respect to the CONTRACTOR Vehicles and Other CONTRACTOR Equipment, if any; provided, however, that any such obligation or indebtedness need not be paid if the validity thereof shall currently be contested in good faith by appropriate proceedings and if the CONTRACTOR shall have set aside on its books adequate reserves with respect thereto, except
that all such obligations and indebtednesses shall be paid forthwith upon an adverse decision in such proceedings and the exhaustion of available appellate relief with respect thereto.

Section 13.10 Compliance with Agreements

The CONTRACTOR shall comply with the provisions of existing leases, contracts, and agreements to which it is a party and that are material to the CONTRACTOR's provision of the TRANSIT SERVICES and Other Services. The CONTRACTOR shall not, without the prior written approval of the AUTHORITY, enter into, renew, fail to renew, modify, or terminate any such contracts, leases, or agreements if such entry, renewal, failure to renew, modification, or termination will impair the performance by the CONTRACTOR of the TRANSIT SERVICES or Other Services or result in any material increase in Reimbursable Expenses or material reduction in Transit and Other Services Revenues.

Section 13.11 Compliance with Applicable Laws

The CONTRACTOR shall comply with all federal, state, and local statutes, laws, rules, regulations, and orders applicable to the TRANSIT SERVICES and Other Services.

Section 13.12 Compliance with Grant Conditions

The CONTRACTOR shall comply with all conditions of, and all laws and regulations and all CITY policies, practices, and procedures applicable to, any federal, state, or local grant received by the AUTHORITY, the CITY, or by the CONTRACTOR at any time with respect to the TRANSIT SERVICES, the Other Services, the Equipment, or the Real Property and Facilities.

Section 13.3 Interest of Members of Delegates to, Congress

No member of, or delegate to, the Congress of the United States shall be admitted to any share or part of this Agreement or to any benefit arising from this Agreement.

Section 13.4 Restrictions on Lobbying

The CONTRACTOR warrants and represents that it will comply, and will require its subcontractors and suppliers to comply, with the requirements of 31 U.S.C. § 1352 and 49 C.F.R. Part 20 regarding use of federal funds for lobbying;

ARTICLE 14 – GENERAL PROVISIONS

Section 14.1 Complete Agreement

This Agreement, including the exhibits hereto and the Operating Manual, constitutes the entire agreement between the parties hereto with respect to TRANSIT SERVICES and Other Services, and this Agreement supersedes any prior agreement between the parties, whether oral or written, with respect to TRANSIT SERVICES and Other Services.

Section 14.2 Amendments

No modification, addition, deletion, revision, alteration, or other change to this Agreement shall be
effective unless and until such change is reduced to writing and executed and delivered by the authorized representatives of each of the parties hereto.

Section 14.3 Notices

Any notice or other communication required or permitted to be given under this Agreement shall be in writing and shall be: (A) personally delivered, (B) delivered by a reputable overnight courier, or (C) delivered by certified mail, return receipt requested, and deposited in the U.S. mail, postage prepaid. Telecopy notices shall be deemed valid only to the extent that they are: (i) actually received by the individual to whom addressed and (ii) followed by delivery of actual notice in the manner described in either (A), (B) or (C) above within three (3) business days thereafter. Unless otherwise expressly provided in this Agreement, notices shall be deemed received at the earlier of: (x) actual receipt, (y) one (1) business day after deposit with an overnight courier as evidenced by a receipt of deposit, or (z) three (3) business days following deposit in the U.S. mail, as evidenced by a return receipt. Notices shall be directed to the parties at their respective addresses as follows:

For Notices and Communications to the CITY:
City of Franklin
Attention: Abby Gambill – Traffic Operations Center Operator
109 3rd Avenue South, Suite 133
Franklin, TN 37064
Phone: (615) 791-3218
Email: Abby.Gambill@franklintn.gov

For Notices and Communications to the CONTRACTOR:

Attention: DEBBIE HENRY
Address: The TMA Group
708 Columbia Avenue
Franklin, TN 37064
Phone: 615-790-4005
Email: dhenry@tmagroup.org

By notice complying with the foregoing requirements of this Section, each party shall have the right to change the address, the addressee, or both for all future notices and communications to such party, but no notice of a change of address or addressee shall be effective until actually received.

Section 14.4 Calendar Days and Time

Any reference herein to "day" or "days" shall mean calendar and not business days. If the date for giving or receiving of any notice required to be given hereunder or the performance of any obligation hereunder falls on a Saturday, Sunday, or Federal or State of Tennessee holiday, then said notice or obligation may be given or performed on the next business day after such Saturday, Sunday, or Federal or State of Tennessee holiday. Any reference herein to time of day shall refer to local time for the City of Franklin, Tennessee.

Section 14.5 Governing Laws
This Agreement and the rights of the parties hereunder shall be interpreted and enforced in accordance with the internal laws, but not the conflict of laws rules, of the State of Tennessee.

Section 14.6 Changes in Law

Unless otherwise explicitly provided in this Agreement, any reference to laws, ordinances, rules, or regulations shall include such laws, ordinances, rules, or regulations as they may be amended or modified from time to time.

Section 14.7 Interpretation

This Agreement shall be construed without regard to the identity of the party who drafted the various provisions of this Agreement. Moreover, every provision of this Agreement shall be construed as though all parties hereto participated equally in the drafting thereof. As a result of the foregoing, any rule of construction that a document is to be construed against the drafting party shall not be applicable.

Section 14.8 Severability

The provisions of this Agreement shall be interpreted possible to sustain their legality and enforceability as a whole. If any provision of this Agreement is construed or held to be void, invalid, illegal, or unenforceable in any respect, the remaining part of that provision and the remaining provisions of this Agreement shall not be affected, impaired, or invalidated thereby, but shall remain in full force and effect. The unenforceability of any provision of this Agreement in a specific situation shall not affect the enforceability of that provision in any other situation.

Section 14.9 No Third-Party Beneficiaries

Nothing in this Agreement shall create, or be construed to create, any third-party beneficiary rights in any person or entity not a signatory to this Agreement.

Section 14.10 Counterparts

This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original.

Section 14.11 Independent Contractor

In the performance of the TRANSIT SERVICES and Other Services pursuant to this Agreement, the CONTRACTOR is an independent contractor with the authority to control and direct the performance of the details of the TRANSIT SERVICES and Other Services to be performed pursuant to this Agreement. All personnel necessary for the CONTRACTOR's performance pursuant to this Agreement shall be employees of the CONTRACTOR or of the CONTRACTOR's subcontractors. None of the said personnel shall be deemed for any purpose to be employees, agents, or representatives of the AUTHORITY or the CITY. No requirement of approval, other provision of this Agreement, or subsequent conduct of the AUTHORITY or the CONTRACTOR shall be construed to create the relationship of principal and agent, partners, or joint ventures between the AUTHORITY and the CONTRACTOR.

Assignment.
Section 14.12 No Assignment

The CONTRACTOR shall not assign either its rights or its obligations under this Agreement without the prior written consent of the AUTHORITY, which consent may be granted or withheld at the sole discretion of the AUTHORITY. Any attempted or purported assignment of such rights or obligations without the prior written consent of the AUTHORITY shall be void and of no effect. Any successor to the CONTRACTOR's rights under this Agreement shall be bound by, and shall comply with, all of the provisions, conditions, and requirements of this Agreement. If the parties wish to allow the assignment of the Agreement under certain circumstances, this provision can be modified accordingly.

Section 14.13 Non-Waiver

The AUTHORITY shall not be deemed to have waived any right, provision, covenant, condition, or payment under this Agreement unless such waiver is in writing and signed by an authorized officer or director of the AUTHORITY. No delay or omission by the AUTHORITY in exercising any right under this Agreement, no failure by the AUTHORITY to enforce any provision, covenant, or condition of this Agreement, and no payment or receipt of any money by the AUTHORITY under this Agreement shall operate as a waiver of such right, provision, covenant, condition, or payment, or any other right, by the AUTHORITY. All the rights and remedies of the AUTHORITY under this Agreement shall be cumulative and not exclusive and may be exercised singly or concurrently by the AUTHORITY. The waiver or exercise of any remedy by the AUTHORITY shall not be construed as a waiver of any other remedy available under this Agreement or under general principles of law or equity.

ARTICLE 15 – FEDERAL SUPPLEMENTARY CONDITIONS OF THE CONTRACT

Section 15.1 Project Implementation

A. No Federal Government Obligations to Third Parties. The CONTRACTOR acknowledges and agrees that, notwithstanding any concurrence by the Federal Government in or approval of the solicitation or award of the underlying contract, absent the express written consent by the Federal Government, the Federal Government is not a party to this contract and shall not be subject to any obligations or liabilities to the CONTRACTOR, or any other party (whether or not a party to that contract) pertaining to any matter resulting from the underlying contract.

   (1) The CONTRACTOR agrees to include the above clause in each subcontract financed in whole or in part with federal assistance provided by Federal Transit Administration ("FTA"). It is further agreed that the clause shall not be modified, except to identify the subcontractor who will be subject to its provisions.

B. Federal Changes. The CONTRACTOR shall at all times comply with all applicable FTA regulations, policies, procedures, and directives, including, without limitation, those listed directly or by reference in the Grant Agreement, as they may be amended or promulgated from time to time during the term of this contract. The CONTRACTOR's failure to so comply shall constitute a material breach of this contract.

C. Suspension and Debarment. This contract is a covered transaction for purposes of 49 CFR Part 29. As such, the CONTRACTOR is required to verify that none of the CONTRACTOR, its
principals, as defined at 49 CFR 29.995, or affiliates, as defined at 49 CFR 29.905, are excluded or disqualified as defined at 49 CFR 29.940 and 29.945. The CONTRACTOR is required to comply with 49 CFR 29, Subpart C and must include the requirement to comply with 49 CFR 29, Subpart C in any lower tier covered transaction it enters into. By signing this agreement, the CONTRACTOR certifies as follows: "The certification in this clause is a material representation of fact relied upon by the Client. If it is later determined that the CONTRACTOR knowingly rendered an erroneous certification, in addition to remedies available to the Client, the Federal Government may pursue available remedies, including but not limited to suspension and/or debarment." The CONTRACTOR agrees to comply with the requirements of 49 CFR 29, Subpart C while this offer is valid and throughout the period of any contract that may arise from this offer. The CONTRACTOR further agrees to include a provision requiring such compliance in its lower tier covered transactions.

D. False or Fraudulent Statements or Claims.

(1) The CONTRACTOR acknowledges that the provisions of the Program Fraud Civil Remedies Act of 1986, as amended, 31 U.S.C. § 3801 et seq. and the U.S. Department of Transportation ("DOT") regulations, "Program Fraud Civil Remedies," 49 CFR Part 31, apply to its actions pertaining to this project. Upon execution of the underlying contract, the CONTRACTOR certifies or affirms the truthfulness and accuracy of any statement it has made, it makes, it may make, or causes to be made, pertaining to the underlying contract or the FTA assisted project for which this contract work is being performed. In addition to other penalties that may be applicable, the CONTRACTOR further acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification, the Federal Government reserves the right to impose the penalties of the Program Fraud Civil Remedies Act of 1986, as amended, on the CONTRACTOR to the extent the Federal Government deems appropriate.

(2) The CONTRACTOR also acknowledges that if it makes, or causes to be made, a false, fictitious, or fraudulent claim, statement, submission, or certification to the Federal Government under a contract connected with a project that is financed in whole or in part with federal assistance originally awarded by the FTA under the authority of 49 U.S.C. § 5307 the Federal Government reserves the right to impose the penalties of 18 U.S.C. § 1001 and 49 U.S.C. § 5307(e)(1)(B) on the CONTRACTOR, to the extent the Federal Government deems appropriate.

(3) The CONTRACTOR agrees to include the above two clauses in each subcontract financed in whole or in part with federal assistance provided by the FTA. It is further agreed that the clauses shall not be modified, except to identify the subcontractor who will be subject to the provisions.

Section 15.2 Incorporation of FTA Terms

The preceding provisions include, in part, certain Standard Terms and Conditions required by the DOT, whether or not expressly set forth in the preceding contract provisions. All contractual provisions required by the DOT, as set forth in FTA Circular 4220.1 F, are hereby incorporated by reference. Anything to the contrary herein notwithstanding, all FTA mandated terms shall be deemed to control in the event of a conflict with other provisions contained in this Agreement. The CONTRACTOR shall not perform any act, fail to perform any act, or refuse to comply with any AUTHORITY requests which would cause the AUTHORITY to be in violation of the FTA terms and conditions.
Section 15.3 Environmental, Resource Conservation, and Energy Requirements

A. Energy Requirements. The CONTRACTOR agrees to comply with mandatory standards and policies relating to energy efficiency which are contained in the State of Tennessee Energy Assurance Plan issued in compliance with the Energy Policy and Conservation Act.

B. Clean Water.
   (1) The CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Federal Water Pollution Control Act, as amended, 33 U.S.C. § 1251 et seq. The CONTRACTOR agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to the FTA and the appropriate U.S. Environmental Protection Agency ("EPA") Regional Office.
   (2) The CONTRACTOR also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by the FTA.

C. Clean Air.
   (1) The CONTRACTOR agrees to comply with all applicable standards, orders, or regulations issued pursuant to the Clean Air Act, as amended, 42 U.S.C. § 7401 et seq. The CONTRACTOR agrees to report each violation to the Purchaser and understands and agrees that the Purchaser will, in turn, report each violation as required to assure notification to FTA and the appropriate EPA Regional Office.
   (2) The CONTRACTOR also agrees to include these requirements in each subcontract exceeding $100,000 financed in whole or in part with federal assistance provided by the FTA.

Section 15.4 Drug and Alcohol Testing

The Drug and Alcohol testing provisions apply to Operational Service Contracts. The CONTRACTOR agrees to establish and implement a drug and alcohol testing program that complies with 49 CFR Parts 653 and 654, produce any documentation necessary to establish its compliance with Parts 653 and 654, permit any authorized representative of the DOT or its operating administrations, the State Oversight Agency, or the AUTHORITY to inspect the facilities and records associated with the implementation of the drug and alcohol testing program as required under 49 CFR Parts 653 and 654 and review the testing process. The CONTRACTOR agrees further to certify annually its compliance with Parts 653 and 654 before March 1st and to submit the Management Information System ("MIS") reports before March 1st to the AUTHORITY. To certify compliance, the CONTRACTOR shall use the "Substance Abuse Certifications" in the "Annual List of Certifications and Assurances for Federal Transit Administration Grants and Cooperative Agreements," which is published annually in the Federal Register.

Section 15.5 Transit Employee Protective Agreements

The Transit Employee Protective Provisions apply to each contract for transit operations performed by employees of a contractor recognized by the FTA to be a transit operator. Because transit operations involve many activities apart from directly driving or operating transit vehicles, the FTA determines which activities constitute transit "operations" for purposes of this clause.
A. The CONTRACTOR agrees to comply with applicable transit employee protective requirements as follows:

(1) General Transit Employee Protective Requirements. To the extent that the FTA determines that transit operations are involved, the CONTRACTOR agrees to carry out the transit operations work on the underlying contract in compliance with terms and conditions determined by the U.S. Secretary of Labor to be fair and equitable to protect the interests of employees employed under this contract and to meet the employee protective requirements of 49 U.S.C. A 5333(b), and U.S. Department of Labor ("DOL") guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the letter of certification from the DOL to the FTA applicable to the FTA Recipient's project from which federal assistance is provided to support work on the underlying contract. The CONTRACTOR agrees to carry out that work in compliance with the conditions stated in that DOL letters. The requirements of this subsection (1), however, do not apply to any contract financed with federal assistance provided by FTA either for projects for elderly individuals and individuals with disabilities authorized by 49 U.S.C. § 5310(a)(2), or for projects for non-urbanized areas authorized by 49 U.S.C. § 5311. Alternate provisions for those projects are set forth in subsections (2) and (3) of this clause.

(2) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5310(a)(2) for Elderly Individuals and Individuals with Disabilities. If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. § 5310(a)(2), and if the U.S. Secretary of Transportation has determined or determines in the future that the employee protective requirements of 49 U.S.C. § 5333(b) are necessary or appropriate for the state and the public body subrecipient for which work is performed on the underlying contract, the CONTRACTOR agrees to carry out the project in compliance with the terms and conditions determined by the U.S. Secretary of Labor to meet the requirements of 49 U.S.C. § 5333(b), DOL guidelines at 29 CFR Part 215, and any amendments thereto. These terms and conditions are identified in the DOL's letter of certification to the FTA, the date of which is set forth in the Grant Agreement or Cooperative Agreement with the state. The CONTRACTOR agrees to perform transit operations in connection with the underlying contract in compliance with the conditions stated in that DOL letter.

(3) Transit Employee Protective Requirements for Projects Authorized by 49 U.S.C. § 5311 in Non-urbanized Areas. If the contract involves transit operations financed in whole or in part with federal assistance authorized by 49 U.S.C. § 5311, the CONTRACTOR agrees to comply with the terms and conditions of the Special Warranty for the Non-urbanized Area Program agreed to by the U.S. Secretaries of Transportation and Labor, dated May 31, 1979, and the procedures implemented by the DOL or any revision thereto. The CONTRACTOR also agrees to include the any applicable requirements in each subcontract involving transit operations financed in whole or in part with federal assistance provided by the FTA.

Section 15.6 Charter Bus and School Bus Requirements

The CONTRACTOR agrees to comply with 49 U.S.C. § 5323(d) and 49 CFR Part 604, which provides that recipients and sub recipients of FTA assistance are prohibited from providing charter service using federally funded equipment or facilities if there is at least one (1) private charter operator willing and
able to provide the service, except under one (1) of the exceptions at 49 CFR 604.9. Any charter service
provided under one (1) of the exceptions must be " incidental" (i.e. it must not interfere with or detract
from the provision of mass transportation.) The School Bus requirements apply to Operational Service
Contracts. Pursuant to 69 U.S.C. § 5323(f) and 49 CFR Part 605, recipients and subrecipients of FTA
assistance may not engage in school bus operations exclusively for the transportation of students and
school personnel in competition with private school bus operators unless qualified under specified
exemptions. When operating exclusive school bus service under an allowable exemption, recipients and
subrecipients may not use federally funded equipment, vehicles, or facilities.

Section 15.7 Certification Regarding Lobbying

The CONTRACTOR certifies, 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
CONTRACTOR, to any person for influencing or attempting to influence an officer or employee
of an 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 making lobbying contacts to an officer or employee of any agency, a Member of Congress, an
officer or employee of Congress, or an employee of a Member of Congress in connection with
any federal contract, grant, loan, or cooperative agreement, the CONTRACTOR shall complete
and submit Standard Form LLL, "Disclosure of Lobbying Activities," in accordance with its

C. The CONTRACTOR shall require that the language of this certification be included in the award
documents for all sub-awards at all tiers (including subcontracts, sub grants, and contracts
under grants, loans, and cooperative agreements) and that all subrecipients shall certify and
disclose accordingly. 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. [Note: Pursuant to 31 U.S.C. §
1352(c)(1)-(2)(A), any person who makes a prohibited expenditure or fails to file or amend a
required certification or disclosure form shall be subject to a civil penalty of not less than
$10,000 and not more than $100,000 for each such expenditure or failure.] The CONTRACTOR
certifies or affirms the truthfulness and accuracy of each statement of its certification and
disclosure, if any. In addition, the CONTRACTOR understands and agrees that the provisions of
31 U.S.C. § 3801 et seq. apply to this certification and disclosure, if any.

In WITNESS WHEREOF, the parties have caused this Agreement to be made, effective, and executed
as of the ___ day of ___, 2019 by their respective authorized officials.
CONTRACTOR:

THE TMA GROUP - DEBBIE HENRY
Name: Debbi Henry
Title: Executive Director

State of TENNESSEE
County of Williamson

Personally appeared before me, the undersigned, a Notary Public of said State and County,
Debbi Henry, with whom I am personally acquainted (or proved to me on the basis of
satisfactory evidence), and who, upon oath, acknowledged him/herself to be the Executive Director
of The TMA Group, and that as such, is authorized to execute the
foregoing instrument for the purposes therein contained.

WITNESS my hand and seal this 7th day of June, 2019.

Notary Public
My Commission Expires: 9/25/22

FRANKLIN TRANSIT AUTHORITY:

DALE O. THOMAS
Name: Dale Thomas
Chair

State of Tennessee
County of Williamson

Personally appeared before me, the undersigned, a Notary Public of said State and County,
Dale Thomas, with whom I am personally acquainted (or proved to me on the basis of
satisfactory evidence), and who, upon oath, acknowledged him/herself to be the Chair of the Franklin
Transit Authority, and that as such, is authorized to execute the foregoing instrument for the purposes
therein contained.

WITNESS my hand and seal this 7th day of June, 2019.

Notary Public
My Commission Expires: 9/25/22
PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

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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 promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.

(g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and

(h) 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


(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 Metlakatla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.
**Alaska Native Corporation (ANC)** means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

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

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

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

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

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

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

**Days** mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

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

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

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

2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**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.

**Good faith efforts** means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
**Home state** means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

**Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

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

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

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

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

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

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

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

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

**Primary industry classification** means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: [http://www.census.gov/eos/www/naics/](http://www.census.gov/eos/www/naics/).

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

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

**Program** means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.
Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

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

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

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

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

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

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

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

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member 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.

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).

§26.7 What discriminatory actions are forbidden?

(a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

(b) In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

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

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.
(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

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

[72 FR 15617, Apr. 2, 2007]

§26.11 What records do recipients keep and report?

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

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

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

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

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

(i) Firm name;

(ii) Firm address;

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

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than $500,000; $500,000-$1 million; $1-2 million; $2-5 million; etc.) rather than requesting an exact figure from the firm.

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

(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.


§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.

§26.15 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 primary 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) the cumulative total value of which exceeds $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 the cumulative total value of which exceeds $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.


§26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

§26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.
§26.27 What efforts must recipients make concerning DBE financial institutions?

You must thoroughly investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in your community and make reasonable efforts to use these institutions. You must also encourage prime contractors to use such institutions.

§26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

§26.31 What information must you include in your DBE directory?

(a) In the directory required under §26.81(g) of this Part, you must list all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE.

(b) You must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. You must make any changes to your current directory entries necessary to meet the requirement of this paragraph (a) by August 26, 2011.

[76 FR 5096, Jan. 28, 2011]

§26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

§26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a “mentor-protégé” program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.
(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

§26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.


§26.39 Fostering small business participation.

(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., $1 million).
(2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

[76 FR 5097, Jan. 28, 2011]

Subpart C—Goals, Good Faith Efforts, and Counting

§26.41 What is the role of the statutory 10 percent goal in this program?

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§26.43 Can recipients use set-asides or quotas as part of this program?

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.
§26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) $250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in §26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the “relative availability of DBEs”). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) Step 1. You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) Use DBE Directories and Census Bureau Data. Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) Use a bidders list. Determine the number of DBEs that have bid or quoted (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.

(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. 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.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the “but for” factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming three fiscal years.

(2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects, 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)(1)(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.

(ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.

(iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.

(iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.

(v) You may make, for informational purposes, projections of your expected DBE achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.

(2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you. 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.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(6) Timely submission and operating administration approval of your overall goal is a condition of eligibility for DOT financial assistance.
(7) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive DOT financial assistance.

(g)(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.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

§26.47 Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

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

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;
(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in §26.103 or §26.105 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;

(ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.

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


§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.

[79 FR 59594, Oct. 2, 2014]
§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.

(b) Race-neutral means include, but are not limited to, the following:

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.
(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order meet your overall goal.

Example to paragraph (f)(1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral means 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 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.

(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)(i) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(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.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(3) For purposes of this paragraph, good cause includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

(iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant 2 CFR Parts 180, 215 and 1,200 or applicable state law;

(vi) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vi) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(vii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(viii) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(ix) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

(4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.

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

(6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.
(g) When a DBE subcontractor is terminated 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.

(i) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

(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.

(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 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.

(7) 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.
(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.

(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.


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.

§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.


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§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.

(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 $23.98 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.


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§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.

[79 FR 59596, Oct. 2, 2014]

§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.

(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)(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.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if—

(1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or

(2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

(e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

(f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

(1) The owner's expertise must be—

(i) In a specialized field;

(ii) Of outstanding quality;

(iii) In areas critical to the firm's operations;

(iv) Indispensable to the firm's potential success;

(v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

(2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

(g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.
(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

(i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:

(1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

(2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

(j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—

(1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

(3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

§26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

(1) In determining whether a potential DBE is an independent business, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

(3) You must examine the firm’s relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

(4) In considering factors related to the independence of a potential DBE firm, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in §26.69(j)(2).

(d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.

(1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

(2) In a corporation, disadvantaged owners must control the board of directors.

(3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

(e) Individuals who are not socially and economically disadvantaged 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.

(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 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.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

(n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.

(1) The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. If your Directory does not list types of work for any firm in a manner consistent with this paragraph (a)(1), you must update the Directory entry for that firm to meet the requirements of this paragraph (a)(1) by August 28, 2011.

(2) Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.

(3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

(4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.
(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchisor or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

(p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

(q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.


§26.73 What are other rules affecting certification?

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

(b)(1) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

(2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.
(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

(g) You must not require a DBE firm to be prequalified as a condition for certification.

(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 §26.65. 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.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

(b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) The UCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.

(3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The “home state” UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm’s application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient’s certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

§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)(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.

(d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.

(e) [Reserved]

(f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.

(g) You must safeguard from disclosure to unauthorized persons information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

(h)(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.

(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 (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).
(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under §26.89.

(l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

(m) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under §26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the “end of the line,” behind other applications that have been made since the firm's previous application was withdrawn. You may also apply the waiting period provided under §26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

(3) If you have filed a certification appeal with DOT (see §26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.

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

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

(ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Within seven days contact State A and request a copy of the site visit review report for the firm (see §26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by “State A” or any other State of not complying with such requests in a timely manner is noncompliance with this Part.

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

(i) Evidence that State A's certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

(iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;

(iv) The State law of State B requires a result different from that of the State law of State A.

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

(3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.

(4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.

(i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.
(ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.

(iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.

(iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.

(v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.

(vi) The firm's application for certification is stayed pending the outcome of this process.

(vii) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under §26.89 of this part.

(e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.

(f)(1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:

(i) The name of the firm;

(ii) The name(s) of the firm's owner(s);

(iii) The type and date of the action;

(iv) The reason for the action.

(2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.

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

(g) You must implement the requirements of this section beginning January 1, 2012.

[76 FR 5100, Jan. 28, 2011]
§26.86 What rules govern recipients’ denials of initial requests for certification?

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.

(b) [Reserved]

(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. An applicant's appeal of your decision to the Department pursuant to §26.89 does not extend this period.

(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.


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§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 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.

(h) [Reserved]

(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.

§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.

[79 FR 59599, Oct. 2, 2014]
§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.

(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: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(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 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.

(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 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.

(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.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department’s determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm’s eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm’s eligibility under §26.87. Such recipients must not remove the firm’s eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

Subpart F—Compliance and Enforcement

§26.101 What compliance procedures apply to recipients?

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

(b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

§26.103 What enforcement actions apply in FHWA and FTA programs?

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

(a) Noncompliance complaints. Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration’s Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.
(b) **Compliance reviews.** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

(c) **Reasonable cause notice.** If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.

(d) **Conciliation.** (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) **Enforcement actions.** (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

§26.105 What enforcement actions apply in FAA programs?

(a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

(b) The provisions of §26.103(b) and this section apply to enforcement actions in FAA programs.

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

§26.107 What enforcement actions apply to firms participating in the DBE program?

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.
(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

(d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.

(e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

(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.


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.

[79 FR 59600, Oct. 2, 2014]

Appendix B to 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 subcontracted 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 or committed 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.**

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).

Appendix F to Part 26—Uniform Certification Application Form

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 programs if:
- The firm is a non-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 control it.
- The firm's disadvantaged owners are U.S. citizens and lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration’s size standard. and does not exceed $22.5 million in gross annual receipts for DBE ($52.47 million for ACDBEs). (Other size standards apply for ACDBEs 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 review 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 newly certified as a DBE do not have to complete this form, but may be asked by certifying agencies out 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—http://www.dot.gov/ (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)


In collecting the information required by this form, the Department of Transportation (Department) complies with the provisions of the Federal 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 destroyed. 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 Programs as defined in 49 C.F.R. 26 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 C.F.R. 13.3. You may review DOT’s complete Privacy Act Instrument at the Federal Register published on April 11, 2000 (65 FR 10447).

Under 49 C.F.R. 18107, dated February 2, 1999 and January 31, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided inaccurate information or made false statements, the Department may institute suspension or debarment proceedings against the person or firm under 2 CFR Parts 180 and 120. Nonprocurement Suspension and Debarment, under enforcement actions under 49 C.F.R. Part 26, Program Fraud and Civil Penalties, under the authority to the Department of Justice for civil proceedings under 11 U.S.C. 1801, which mandates 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 full 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 Application
(10) Check the appropriate box indicating whether your firm is currently certified in the DBE/ACDBE program, and provide the name of the certifying agency that certified your firm. List the dates of any site visits conducted by your base state and any other states or UCP members. Also provide the names of site/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, SB, or Small Disadvantaged Business (SDB) firm, or state and local MBE/WBE firm. Indicate if the firm has ever been excluded from one of those programs. Indicate if the application was withdrawn or whether the firm was debared, 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:
(12) Give a concise description of your 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 products/services. If necessary, attach additional sheets.

(13) If you know the appropriate NAICS Code for the line(s) of work you identified in your business profile, note the codes in the space provided.

(14) Enter the date your firm was established as noted in your firm’s Articles of Incorporation or charter.

(15) Check the appropriate box describing the manner in which you and each other owner acquired ownership of your firm. If you checked “50%” or “Other”, briefly explain in the space provided.

(16) 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 on record on your firm’s Federal tax return.

(17) 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.

(18) 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.

(19) 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 screenshots of these firms’ Federal tax returns. Affiliates are defined in 49 C.F.R. 26.5 and 49 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, floor space, 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

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nal 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 has 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 were/were other firms;
(d) owned any percentage of any other firm; and
(e) had any subsidiaries of its own.

4. Indicate the relationship with another firm remaining
more than 25% of your firm’s receipts.

If you answered “Yes” to any of the questions in (1)(a)-(e),
you may be asked to explain the arrangement in detail.

Section B: 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 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, otherwise listed.

7. Check the appropriate box to indicate whether this
owner is a U.S., citizen or a lawfully admitted
dmanent 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
owner has had since the acquire the ownership interest in
your firm, broken down by each, 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 employee.
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. Check the appropriate box that indicates whether:
(c) if your firm 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
name of the business relationship, and the owner’s
functions at this firm.

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

4. 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 DREACDBE Program Eligibility” with your application. Note, complete this
section and accompanying statement only for each
owner applying for DBE qualification (i.e., be each
owner claiming to be socially and economically
disadvantaged).

5. 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

6. Check the appropriate box to indicate whether any of
your immediate family members, managers, or employees,
own or manage, or are associated with another company.

Immediate family members is defined in 49 C.F.R.
325. 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 C: 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
perform a management or supervisory function for
any other business. If you answered “Yes,” identify
each person by name, title, the name of the
other business in which she is involved, and brief
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.
In absentia, list the names and ownership interests 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
performs a management or supervisory function for any
other business. Identify the person, business, and their
related functions. Identify if any of the persons listed above
own or work for any other firm(s) that has a relationship
with this firm (i.e. ownership interest, shared office space,
financial investment, equipment, leases, personnel sharing,
etc.) If you answered “Yes,” describe the nature of the
firm’s 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
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.

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 the relief and the extent
to which the other firms control and direct functions.

E. Financial / Banking Information

Banking Information: State the name, city and state
of your firm’s bank. Include the information
necessary to identify the account holder and the
amount of the deposit.

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
supporting the loan.

State the name and address of each source, the name
of the person securing the loan, origin of the 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 space provided, the type of contribution or
asset transferred, its original 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 bond information.

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 on each contract, and the dollar
value of each contract.

AIRPORT CONCESSION (ACO) APPLICANTS

Identify the concession space, address and location at the
airport, the value of the property or lease, any license or
permits, and the name of the person who will be
responsible for the operation of the concession.

AFFIDAVIT & SIGNATURE

The Affidavit of Certification must accompany your
application for certification. Carefully read the
affidavit and fill it out accurately. Fill in the required information
for each blank space, and sign and date the affidavit in the
presence of a Notary Public, if required.
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 first? ☐ 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) If 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) ____________________________

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(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.

(7) Type of Legal Business Structure: (check all that apply):
☐ Sole Proprietorship ☐ Limited Liability Partnership
☐ Partnership ☐ Corporation
☐ Limited Liability Company ☐ Joint Venture (Identify all IV partners)
☐ Applying as an A/CDBE ☐ 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 you are affiliates or subsidiaries of the applicant firm or owners, you must submit complete copies of these firms’ Federal tax returns).

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<th>Year</th>
<th>Gross Receipts of Applicant Firm $</th>
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6. 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, 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.

________________________________________________________________________________________

________________________________________________________________________________________

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________________________________________________________________________________________

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

(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 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 continued.
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 Americans
□ 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:
Type: ____________________________ Dollar Value: ____________________________
Interest in firm: ____________________________
□ 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: ____________________________

(3a) 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, loans, personnel sharing, etc.) □ Yes □ No
If Yes, identify the name of the business, 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:

___________________________________________________________________________________________________________________________________________

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

(4b) 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): ____________________________

U.S. DOT Uniform DBE/ACDBE Certification Application • Page 7 of 14
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:

□ Percentage owner: ____________________________

Class of stock owned: ____________________________

Date acquired: ____________________________

(9) Initial investment to acquire ownership:

□ Cash: ____________________________

□ Real Estate: ____________________________

□ Equipment: ____________________________

□ Other: ____________________________

(10) Describe how you acquired your business:

□ Started business myself: ____________________________

□ It was a gift from: ____________________________

□ I inherited it from: ____________________________

□ Other: ____________________________

(Relate 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) 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:

______________________________________________

(4) 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:

______________________________________________

(5) What is the personal net worth of this disadvantaged owner applying for certification? $ ____________________________

(6) 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.

(7) 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): ____________________________

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# Section 4: CONTROL

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

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Date</th>
<th>Ethnicity</th>
<th>Gender</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
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<tr>
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</tr>
</tbody>
</table>

(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:

<table>
<thead>
<tr>
<th>Person</th>
<th>Title</th>
<th>Business</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

(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 investment, equipment, leases, personal services, etc.)
   - Yes  
   - No  
   If Yes, identify for each:

<table>
<thead>
<tr>
<th>Person</th>
<th>Title</th>
<th>Business</th>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

## 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):

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Percent Owned</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Always</th>
<th>Seldom</th>
<th>Never</th>
</tr>
</thead>
<tbody>
<tr>
<td>F</td>
<td>F</td>
<td>S</td>
</tr>
<tr>
<td>N</td>
<td>N</td>
<td>N</td>
</tr>
</tbody>
</table>

- Sets policy for company direction/scope of operations
- Building and estimating
- Major purchasing decisions
- Marketing and sales
- Supervises field operations
- Attends board meetings and events
- Person in charge (billing, accounts receivable/payable, etc.)
- Sign checks
- Hire, fire, and manage staff
- Designates profits spending or investment
- Directs business by contract credit
- Purchase equipment
- Signs business checks

U.S. DOT Uniform DBE/ACDBE Certification Application • Page 9 of 14

View or download PDF
2. Complete for all Officers, Directors, Managers, and Key Personnel who control the following functions for the firm. (Attach separate sheets as needed).

<table>
<thead>
<tr>
<th>Name</th>
<th>Title</th>
<th>Race and Gender</th>
<th>Percent Owned</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
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<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Yes</th>
<th>No</th>
<th>Sometimes</th>
<th>Often</th>
<th>Seldom</th>
<th>Always</th>
</tr>
</thead>
<tbody>
<tr>
<td>A</td>
<td>F</td>
<td>S</td>
<td>N</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Function</th>
</tr>
</thead>
<tbody>
<tr>
<td>Set policy for company direction/scope of operations</td>
</tr>
<tr>
<td>Bidding and estimating</td>
</tr>
<tr>
<td>Major purchasing decisions</td>
</tr>
<tr>
<td>Marketing and sales</td>
</tr>
<tr>
<td>Supervisors field operations</td>
</tr>
<tr>
<td>Maintain and opening and setting</td>
</tr>
<tr>
<td>Perform office management (billing, accounts receivable/payable, etc.)</td>
</tr>
<tr>
<td>Hire and fire field staff or crew</td>
</tr>
<tr>
<td>Designates profits spending or investment</td>
</tr>
<tr>
<td>Obligates business by contract/credit</td>
</tr>
<tr>
<td>Purchase equipment</td>
</tr>
<tr>
<td>Signs business checks</td>
</tr>
</tbody>
</table>

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

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

<table>
<thead>
<tr>
<th>Make and Model</th>
<th>Current Value Owned or Leased by Firm or Owner?</th>
<th>Used as collateral?</th>
<th>Where is item stored?</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

2. Office Space

<table>
<thead>
<tr>
<th>Street Address</th>
<th>Owned or Leased by Firm or Owner?</th>
<th>Current Value of Property or Lease</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tbody>
</table>

U.S. DOT Uniform DBE/ACDBE Certification Application • Page 10 of 14
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

_____________________________________________________________________

_____________________________________________________________________

B. 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).

<table>
<thead>
<tr>
<th>Name of Source</th>
<th>Address of Source</th>
<th>Name of Person Guaranteeing the Loan</th>
<th>Original Amount</th>
<th>Current Balance</th>
<th>Purpose of Loan</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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<td>2.</td>
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<td>3.</td>
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</tbody>
</table>

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):

<table>
<thead>
<tr>
<th>Contribution/Asset</th>
<th>Dollar Value</th>
<th>From Whom Transferred</th>
<th>To Whom Transferred</th>
<th>Relationship</th>
<th>Date of Transfer</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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<td>2.</td>
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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):

<table>
<thead>
<tr>
<th>Name of License/Permit Holder</th>
<th>Type of License/Permit</th>
<th>Expiration Date</th>
<th>State</th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
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<tr>
<td>2.</td>
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<tr>
<td>3.</td>
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</table>

U.S. DOT Uniform DBE/ACDBE Certification Application • Page 11 of 14
I. List the three largest contracts completed by your firm in the past three years, if any:

<table>
<thead>
<tr>
<th>Name of Owner/Contractor</th>
<th>Name/Location of Project</th>
<th>Type of Work Performed</th>
<th>Dollar Value of Contract</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

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

<table>
<thead>
<tr>
<th>Name of Prime Contractor and Project Number</th>
<th>Location of Project</th>
<th>Type of Work</th>
<th>Project Start Date</th>
<th>Anticipated Completion Date</th>
<th>Dollar Value of Contract</th>
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<tbody>
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**AIRPORT CONCESSION (ACDBE) APPLICANTS ONLY MUST COMPLETE THIS SECTION**

Identify the following information concerning the ACDBE applicant firm:

<table>
<thead>
<tr>
<th>Concession Space</th>
<th>Address / Location at Airport</th>
<th>Value of Property or Lease</th>
<th>Fees/Lease Payments Paid to the Airport</th>
</tr>
</thead>
<tbody>
<tr>
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</table>

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:

<table>
<thead>
<tr>
<th>Name of Concession</th>
<th>Location</th>
<th>Type of Concession</th>
<th>Start Date of Concession</th>
</tr>
</thead>
<tbody>
<tr>
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U.S. DOT Uniform DBE/ACDBE Certification Application • Page 12 of 14
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),

owner or affiliate under penalty of law that I am

(title) of the applicant firm

and that I

have read and understand all of the questions in this

application and that all of the following 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 approved by a
government agency. I understand that a government agency
may, by reason of this knowledge, determine the accuracy
and truth of the statements in this application, and I authorize
such agency to contact any entity named in the application, and
the named firm's bonding companies, bonding 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 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
license, I agree to promptly and directly provide the prime
to contract, if any, the Department, recipient agency, or
federal funding agency an 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
agreements.

I agree to provide written notice to the recipient agency or
 transformation of the named 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 $1.5 million, etc.).

U.S. DOT Uniform DBE/ACDBE Certification Application • Page 13 of 14

NOTARY CERTIFICATE

Signature: 

(DBE/ACDBE Applicant) 

(Date)

I certify that I am a socially and economically disadvantaged individual who is owner of the above-named firms seeking certification as a Disadvantaged Business Enterprise or Airport Concessions Disadvantaged Business Enterprise in support of any application, I certify that I am a member of one or more of the following groups, and that I have held myself out in any 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 $1.52 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)
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
- Resumes (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 owner 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 hand authority forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/leased issues.
- 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, details, and/or de-certifications, if applicable
- All U.S. DOT appeal decisions on those actions.
- Bank authorization and signature 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 resolutions 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 documents, 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)

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

U.S. DOT Uniform DBE/ACDBE Certification Applications • Page 14 of 14

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[79 FR 59603, Oct. 2, 2014]
# Appendix G to Part 26—Personal Net Worth Statement

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**U.S. Department of Transportation**

**Personal Net Worth Statement**

For DBE/ACDBE Program Eligibility

As of [Date]

<table>
<thead>
<tr>
<th>Name</th>
<th>Business/Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Residence Address (As reported to the IRS)</th>
<th>Residence Phone</th>
</tr>
</thead>
<tbody>
<tr>
<td>City, State and Zip Code</td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Business Name of Applicant Firm</th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Sponsor's Full Name</th>
<th>(Marital Status: Single, Married, Divorced, Unmarried)</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Assets</th>
<th>(Only Care)</th>
<th>Liabilities</th>
<th>(Only Care)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Cash and Cash Equivalents</td>
<td>$</td>
<td>Loan on Life Insurance (Complete Section 5)</td>
<td>$</td>
</tr>
<tr>
<td>Bank/Loan Accounts</td>
<td>$</td>
<td>Notes, Obligations on Personal Property (Complete Section 6)</td>
<td>$</td>
</tr>
<tr>
<td>Brokerage, Investment Accounts</td>
<td>$</td>
<td>Notes &amp; Accounts Payable to Banks and Others (Complete Section 2)</td>
<td>$</td>
</tr>
<tr>
<td>Assets Held in Trust</td>
<td>$</td>
<td>Other Liabilities (Complete Section 8)</td>
<td>$</td>
</tr>
<tr>
<td>Loans to Shareholders &amp; Other Receivables</td>
<td>$</td>
<td>Unpaid Taxes (Complete Section 8)</td>
<td>$</td>
</tr>
<tr>
<td>Real Estate Excluding Primary Residence</td>
<td>$</td>
<td></td>
<td>$</td>
</tr>
<tr>
<td>Life Insurance Cash Surrender Value Only</td>
<td>$</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other Personal Property and Assets</td>
<td>$</td>
<td>Total Liabilities</td>
<td>$</td>
</tr>
<tr>
<td>Business Interests Other Than the Applicant Firm</td>
<td>$</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**Total Assets** $  
**Total Liabilities** $ 

**Net Worth** $  

Section 2 Notes Payable to Banks and Others

<table>
<thead>
<tr>
<th>Name of Noteholder(s)</th>
<th>Original Balance</th>
<th>Current Balance</th>
<th>Payment Amount</th>
<th>Frequency (monthly, etc.)</th>
<th>How Secured or Encumbered Type of Collateral</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

U.S. DOT Personal Net Worth Statement for DBE/ACDBE Program Eligibility • Page 1 of 5

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Section 3. Brokerage and custodial accounts, stocks, bonds, retirement accounts. [Full Value] (List attachments if necessary)

<table>
<thead>
<tr>
<th>Name of Security / Brokerage Account / Retirement Account</th>
<th>Cost</th>
<th>Market Value Quotation/Exchange</th>
<th>Value of Quotation/Exchange</th>
<th>Total Value</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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)

<table>
<thead>
<tr>
<th>Type of Property</th>
<th>Property A</th>
<th>Property B</th>
<th>Property C</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Date Acquired and Method of Acquisition (Purchase, inherit, devise, gift, etc.)

<table>
<thead>
<tr>
<th>Name on Deed</th>
<th>Purchase Price</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
</tr>
</tbody>
</table>

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)

<table>
<thead>
<tr>
<th>Insurance Company</th>
<th>Face Value</th>
<th>Cash Surrender Amount</th>
<th>Beneficiaries</th>
<th>Loan or Policy Information</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

U.S. DOT Personal Net Worth Statement for DBE/MBE Program Eligibility • Page 2 of 5
<table>
<thead>
<tr>
<th>Type of Property or Asset</th>
<th>Total Present Value</th>
<th>Amount of Liability (Balance)</th>
<th>Is this asset insured?</th>
<th>Lien or Note amount and Terms of Payment</th>
</tr>
</thead>
<tbody>
<tr>
<td>Automobiles and Vehicles (including recreation vehicles, motorcycles, boats, etc.) include personally owned vehicles that are leased or rented to businesses or other individuals</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Household Goods / Jewelry</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other (List)</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Accounts and Notes Receivable:

Section 7. Value of Other Business Investments, Other Businesses Owned (excluding applicant firm)
Type of Investments: General Partnerships, 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 3 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 personal financial statement, and authorize such agency to contact any entity named in the application or the personal financial statement, including the names of banks, regulating agencies, credit agencies, contractors, clients and other certifying agencies for the purpose of verifying the information supplied and determining the name or names of the beneficiary. I acknowledge and agree that any misrepresentations in this application or in recent pertinent to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded, denied or retraction of certification; suspension and revocation of any contracts, and/or 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 (DE/DCBE Owner) Date

In selecting the information required 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 personal information. This includes how information is collected, used, disclosed, stored, and destroyed. 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 Concessions DBE Programs as defined in C.F.R. Parts 23 and 26. You may review DOT's Privacy Act Statement in the Federal Register published on April 11, 2000 (65FR 18417).

U.S. DOT Personal Net Worth Statement for DBE/ACDBE Program Eligibility • Page 3 of 5
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 $1.3 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 $1.3 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 value as of the date of your statement. Assumptions’ estimated 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 kept domestic or foreign. Provide copies of the bank statement.

Retirement Accounts, IRA, 401(k), 401(b), Pensions: On page 1, enter the total amount of cash or cash equivalents in bank accounts, including checking, savings, money market, certificates of deposit kept domestic or foreign. Provide copies of the bank statement.

Securities and Other Investments: On page 2, enter the total value of all securities held in your firm, including stocks, bonds, and other investments. Enter the total value of all securities held in your firm, including stocks, bonds, and other investments.

Liabilities

Liabilities include debts, mortgages, and other obligations. Enter the total amount of all liabilities, including debts, mortgages, and other obligations.

Liabilities may include debts, mortgages, and other obligations. Enter the total amount of all liabilities, including debts, mortgages, and other obligations.

Real Estate:

Real estate includes real property such as land, buildings, and improvements. Enter the total value of all real estate owned by your firm, including land, buildings, and improvements.

Real estate includes real property such as land, buildings, and improvements. Enter the total value of all real estate owned by your firm, including land, buildings, and improvements.

Life Insurance:

Life insurance includes policies that provide death benefits. Enter the total value of life insurance policies held by your firm, including policies that provide death benefits.

Life insurance includes policies that provide death benefits. Enter the total value of life insurance policies held by your firm, including policies that provide death benefits.

Other Personal Property and Assets:

Other personal property and assets include items such as vehicles, computers, and furniture. Enter the total value of all personal property and assets held by your firm, including items such as vehicles, computers, and furniture.

Other personal property and assets include items such as vehicles, computers, and furniture. Enter the total value of all personal property and assets held by your firm, including items such as vehicles, computers, and furniture.

Other Business Interests:

Other business interests include ownership in other businesses, including those that you do not control. Enter the total value of all business interests held by your firm, including those that you do not control.

Other business interests include ownership in other businesses, including those that you do not control. Enter the total value of all business interests held by your firm, including those that you do not control.
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 noteholder, 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 liens for your business or mortgages for your properties in this section. You may be asked to submit copy of non-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 1, page 3, report the name of the individual obligated, name of co-signers, description of 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 2. Contingent tax liabilities or anticipated taxes for current year should not be included. Describe in detail the name of the individual obligated, name 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 lien, to support the amounts.

Transfers of Assets:

Transfers of Assets: If you checked the box indicating “yes” on page 1 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 cannot be unauthorized.