



District Department of Transportation

OFFICE OF CIVIL RIGHTS
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
DBE PROGRAM PLAN 2014
FEDERAL HIGHWAY ADMINISTRATION
AND
FEDERAL TRANSIT ADMINISTRATION
REVISED JUNE 2014



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

TABLE OF CONTENTS

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

- 2. ADMINISTRATIVE REQUIREMENTS**
 - a. DBE Program Updates.....6
 - b. Policy Statement.....7
 - c. DBE Liaison Officer.....8
 - d. DBE Financial Institutions.....9
 - e. Prompt Payment Mechanisms.....9
 - f. Directory.....10
 - g. Overconcentration.....11
 - h. Business Development Program.....11
 - i. Monitoring and Enforcement Mechanisms.....12
 - j. Small Business.....13

- 3. GOALS, GOOD FAITH EFFORTS AND COUNTING**
 - a. Overall Goals.....17
 - b. Transit Vehicle Manufacturers Goals.....19
 - c. Break out of Estimate Race Neutral and Race Conscious Participation.19
 - d. Contract Goals.....20
 - e. Good Faith Efforts Procedures.....20
 - f. Counting DBE Participation.....24

- 4. DBE Contract Compliance**
 - a. DBE Contract Compliance Process Guide.....25

- 5. CERTIFICATION STANDARDS**
 - a. Certification Process.....29

- 6. CERTIFICATION PROCEDURES**
 - a. Unified Certification Programs.....30
 - b. Procedures for Certification Decisions.....30
 - c. Denials of Initial Requests for Certification.....31
 - d. Removal of a DBE's Eligibility.....32
 - e. Certification of Appeals.....32

- 7. COMPLIANCE AND ENFORCEMENT**
 - a. Information, Confidentiality, Cooperation.....32
 - b. Freedom of Information Act Requests.....33

ATTACHMENTS

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

SUBPART A - General Requirements

Section 26.1 Objectives

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

Section 26.3 Applicability

The District Department of Transportation (DDOT) is the recipient of federal -aid highway funds authorized under Titles I and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21, Pub. L. 105-178, 112 Stat. 107.

The District Department of Transportation (DDOT) is the recipient of federal transit funds authorized by Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II, and V of the Teas-21, Pub. L. 105-178.

Section 26.5 Definitions

The District Department of Transportation (DDOT) will adopt the definitions contained in Section 26.5 for this program.

Section 26.7 Non-discrimination Requirements

The District Department of Transportation (DDOT) will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR parts 26 on the basis of race, color, sex, or national origin.

In administering its DBE program, The District Department of Transportation (DDOT) will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE program with respect to individuals of a particular race, color, sex, or national origin.

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows:

FTA Recipients- The District Department of Transportation (DDOT) - We will report DBE participation to FTA on a semi-annual basis, using the electronic Uniform Report of DBE Awards or Commitments and Payment form available in the FTA TEAM-Web system. This report is due each June 1 and December 1. The report must include DDOT and sub-recipient expenditures. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

FHWA Recipients-DDOT will report DBE participation semi-annually (1st Reporting period: Oct. 1- Mar. 31, 2nd Reporting period: April 1-Sept. 30) to the FHWA Division office using the *Uniform Report of DBE Awards or Commitments and Payments*. The Uniform Reports will be submitted to the FHWA Division office no later than May 1st for the first reporting period and no later than Nov. 1st for the second reporting period.

Bidders List: 26.11(c)

The District Department of Transportation (DDOT) create's a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals. The bidder list will include the name, address, DBE non-DBE status, age, and annual gross receipts of firms.

We collect this information in the following ways:

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

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

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

Section 26.13 Federal Financial Assistance Agreement

The District Department of Transportation (DDOT) has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

The District Department of Transportation (DDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. DDOT shall take all necessary and reasonable steps under **49 CFR Part 26** to ensure nondiscrimination in the award and administration of USDOT-assisted contracts DDOT's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation, and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to DDOT of its failure to carry out its approved program, the Department may impose

sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

Contract Assurance: 26.13b

The District Department of Transportation (DDOT) will ensure that the following clause is placed in every USDOT-assisted contract and subcontract, **this includes each subcontract the prime contractor signs with a subcontractor:**

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The District Department of Transportation (DDOT) has received a grant from FTA: \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year. And for FHWA: **The District Department of Transportation (DDOT) DDOT is required to have a DBE program as an FHWA recipient of federal-aid highway funds authorized by a statute to which this part applies.** The District Department of Transportation (DDOT) will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to USDOT updates representing significant changes in the program.

Section 26.23 Policy Statement

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

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

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

DDOT DBE POLICY STATEMENT MAILING LIST

- 1. Legion Design/Campbell Associates, Chartered**
4301 Connecticut Avenue N.W. Suite 240
Washington, D.C. 20008
Attention: Endrea Frazier, Vice President
Architect/Engineers Council, President

Phone: 202/833-4444
Email: andrea.frazier@legiondesign.com

2. Transportation Development Foundation

Metropolitan Washington American Road & Transportation Builders Association (ARTBA)
1219 – 28th Street N.W.
Washington, D.C. 20007
Attention: Hank Webster
Phone: 202/289-4434
E-mail: hwebster@artba.org

3. Progressive Transportation Services Administration (PTSA)

District Department of Transportation (DDOT)
55 M Street S.E. 5th Floor
Washington, D.C. 20003
Attention: Carl Jackson, Director
Phone: 202/671-4617
E-Mail: carl.jackson@dc.gov

4. Business Opportunity Workforce Development

District Department of Transportation
2311 Martin Luther King, Jr. Avenue S.E.
Washington, D.C. 20020
Attention: Linda Fennell, Manager DBE Supportive Services
Phone: 202/645-8620
E-mail: linda.fennell@dc.gov

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

Section 26.25 DBE Liaison Officer (DBELO)

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

Ms. Lisa Michelle Gregory, Chief, Office of Civil Rights

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

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that DDOT complies with all provisions of 49 CFR Part 26. . The DDOT Chief Performance Officer provided a signed document stating that the DBELO does have direct, independent access to the agency Director concerning DBE program matters. An **organization chart** displaying the DBELO's position in the organization is found in **(Attachment 1)** to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of six (6) to assist in the administration of the program. Their duties and responsibilities include the following:

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

Other personnel responsible for DBE Program implementation

- Mohammed Kabir, PHR/Sr. EO Local and Federal Compliance Officer
- Linda Fennell, Manager, DBE Supportive Services
- Luisa Portillo, Equal Opportunity/DBE Program Specialist
- Vacant Position/ Equal Opportunity/DBE Program Specialist
- Vacant Position/ Equal Opportunity/Title VI/VII

Section 26.27 DBE Financial Institutions

It is the policy of the District Department of Transportation (DDOT) to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contract to make use of these institutions. DDOT has made the following efforts to identify and use such minority institutions.

MINORITY FINANCIAL INSTITUTIONS

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

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

Section 26.29 Prompt Payment Mechanisms

1. For each federal-aid contract, the prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than no later than 7 days from the receipt from DDOT.
2. The prime contractor is required to submit the DDOT DBE Contractor Payment form monthly by the 15th of each month for the previous month payments. Completion and submittal of the form and the required copies (front & back) of cancelled check payments to DBEs is mandatory.
3. DDOT-OCR has a contract compliance system to monitor all federal-aid DBE payments and participation. The compliance system will also assist in monitoring the DBE goal on each project.
4. Prime contractors may access the system via web: <https://ddot.dbesystem.com>
5. The Sr. EO Local and Federal Compliance Officer or its designee will validate the payments made to DBE firms and subcontractors. DBE subcontractors will be required to validate payments received from the prime contractor on the contract compliance tool.

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

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

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

Retainage 26.29

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

Option Three allows:

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

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

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

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

Satisfactory Completion of Work 26.29(c)

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

permits instances when the DBE subcontractor has completed their subcontract agreement in an acceptable manner, the DBE subcontractor is due full return of their retainage even though the prime contractor has not received its full retainage for the project.

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

Dispute Resolution 26.29 (e) (1-3)

DDOT requires that prime contractors insert a contract provision in their subcontractor agreements that allows for a dispute resolution process. Pursuant to 49 CFR Part 26.29(e) (1-3), the following contract provisions are acceptable and are subject to review and approval by the OCR:

(1) A contract clause that requires prime contractors to include in their subcontractors' agreements language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes; and

(2) Disputes between the prime contractor and DBE subcontractor may also be subject to DDOT's Alternative Dispute Resolution process. DDOT's OCR must be made aware of all and any disputes that has risen to the level of requiring third party resolution. In some instances, the OCR will provide technical assistance to assist in settling the dispute.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) As a component to the prompt payment requirement, DDOT has established additional mechanisms to ensure compliance with the prompt payment clause:

Monitoring Payments to DBEs

1. It is the contractor's responsibility (both prime and subcontractors) to maintain records and documents for seven (7) years following the performance of the contract. These records will be made available for inspection upon request by Office of Civil Rights, any authorized representative of DDOT or USDOT.
2. DDOT will monitor the continuous summation of payments actually made to DBE firms and require prime contractors and DBE subcontractors and suppliers to report monthly appropriate information for verification of such payments. Credit toward DBE contract goals will only be given upon satisfactory evidence that payments were actually made to DBEs who were certified at the time of payment, and who have met the criteria for performing commercially useful function.

3. Contractors are required to submit the DDOT DBE Contractor Payment form monthly by the 15th of each month for the previous month payments. Completion and submittal of the form and the required copies (front & back) of cancelled check payments to DBEs is mandatory. See the DDOT DBE Contractor Payment form in the Attachment (4) for instructions and details.
4. DDOT may perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to verify that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the report of proposed DBE participation.

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

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

Section 26.31 Directory

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

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

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

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

Catherine Svoboda, DBE & Compliance Specialist
WMATA - DBE
600 Fifth Street, NW, 3C
Washington, DC 20001
202-962-1854
csvoboda@wmata.com
http://www.wmata.com/business/disadvantaged_business_enterprise/dbe_search.cfm

Section 26.33 Overconcentration

The District Department of Transportation (DDOT) conducts an annual review of its DBE firms during the contract year to determine whether or not overconcentration exists.

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

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

The measures may include, but are not limited to, the use of incentives, technical assistance, business development programs and other appropriate measures designed to assist DBEs in performing work outside the specific field in which non-DBEs are unduly burdened.

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

Section 26.35 Business Development Programs

Enrollment Goal:

Pursuant to 49 CFR Part 26 Appendix C, DDOT's Business Assistance Program conforms to the program requirements under the Business Development Program Participating firms will have to agree to a two-year commitment, meet a designated DBE/SS Program representative at least once per month in order to receive subsidized financial and technical assistance.

DDOT recognizes that the District has created an environment that encourages entrepreneurship on various levels. Many potential entrepreneurs look towards the construction industry for these opportunities. The desired DBE firm that is considered eligible for the BAP must have or be willing to obtain the following:

1. Have maintained certification by DDOT/WMATA;
2. Have been in business for three (3) years or more;
3. Are current with all tax obligations;
4. Complete and submit a business plan within six (6) months of entry into the Business Assistance Program;
5. Attend at least three (3) pre-bid conferences throughout the year;
6. Meet with our DBE/SS Program staff or its designee to develop a marketing plan, including an updated capability statement;

7. Participate in an industry-sponsored OSHA training or other safety training that is required by the DDOT during the program year;
8. Have ready access to the Manual of Uniform Traffic Control Devices (MUTCD); Work Zone Temporary Control Manual; DDOT Standard Specifications for Highways and Structures and other pertinent DDOT. <http://ddot.dc.gov/page/standards-and-guidelines>
9. Attend at least three (3) workshops geared towards small businesses sponsored by the Agency of Local, Disadvantaged Small Businesses, SCORE, SBA, the Washington Network Small Business Development Center or other small business development entities.

Anticipating this increased level of interest, a separate program has to be developed and implemented for firms that have been in business under 3 years. To be included in the DBE business development program, a firm with less than three years of operation must have and be willing to obtain the following:

1. Be certified by DDOT/WMATA;
2. Attend the Post-Certification Orientation within 60 days of entry into the Business Assistance Program;
3. Are current with all tax obligations;
4. Complete and submit a business plan within 90 days of entry into the Business Assistance Program;
5. Attend at least three (3) pre-bid conferences throughout the year;
6. Meet with our DBE/SS Program staff or its designee to develop a marketing plan, including an updated capability statement within 90 days of entry into the Business Assistance Program;
7. Participate in an industry-sponsored OSHA training or other safety training that is required by the DDOT during the program year;
8. Have ready access to the Manual of Uniform Traffic Control Devices (MUTCD); Work Zone Temporary Control Manual; DDOT Standard Specifications for Highways and Structures and other pertinent DDOT. <http://ddot.dc.gov/page/standards-and-guidelines>
9. Attend at least three (3) workshops geared towards small businesses sponsored by the Agency of Local, Disadvantaged Small Businesses, SCORE, SBA, the Washington Network Small Business Development Center or other small business development entities.

To participate in the Intensive Business Development Program, a firm must meet the following requirements in addition to the items listed above:

1. Possess a firm commitment to participate in the program and be willing to sign a participation agreement outlining the required terms for participation;
2. Be certified with DDOT for at least two years;
3. Demonstrate "good faith" effort to subcontract with a prime contractor within two years;
4. Submit a minimum of two (2) bids per year;
5. Have been in consistent operation for at least three years;
6. Have the desire to expand into other scopes of work if necessary; and

7. Meet with our DBE/SS Program or its designee to develop a marketing plan, including marketing materials, including an updated capability statement, if based upon needs assessment the materials are deemed inadequate.

Needs Assessment

Needs assessments will be conducted on all DBE firms that request assistance from the DBE/SS Program. This will be done by DDOT's DBE/SS Program manager or consultant. The results of the needs assessment will be used to develop an individual business plan that outlines the firm's short-term and long-term business goals. The needs assessment will also evaluate workforce capacity and training needs. The needs assessment will also identify the firm's current skills and barriers to compete for contract awards.

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

Business Plan Development

In accordance with 49 CFR Part 26 Appendix C, Business Development Program Guidelines,

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

In accordance with the guidelines, the business plan should contain at least the following:

- (1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.
- (2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.
- (3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted as directed by the business plan development requirements;

- (4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and
- (5) Such other information as DDOT may require.

The DBE Business Development Program Guidelines directs each participant to annually review its currently approved business plan with DDOT's DBE SS Program Manager or their designee and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the DDOT approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan. Such forecast should be included in the participant's business plan. The forecast should include:

- (1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;
- (2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;
- (3) The types of contract opportunities being sought, based on the firm's primary line of business; and
- (4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

Financial Management Services

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

Bond Financing

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

Technical Assistance Program

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

Marketing Services

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

Outreach and Public Education

The DBE/SS Program engages an extensive outreach and education campaign targeting small, local minority and women owned businesses, business groups whose membership comprises of those underrepresented groups and other entities that assist small businesses throughout the Metropolitan Washington region.

Determinations of Success

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

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

(1) Profitability;

(2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;

(3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;

(4) Ability to obtain bonding;

(5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE

businesses in the same area or similar business category; and

(5) Good management capacity and capability.

Transition Stage from Business Development to Graduation

Pursuant to 49 CFR Part 26 Appendix C, program participation in the Business Assistance Program is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

DDOT DBE/SS has established the length of service in the program term for two (2) years; however, DDOT retains the right to review the participant's progress towards profitability and meeting the firms established goals and objectives. The setting of such time is factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the DDOT's DBE/SS Program manager or the designated representative at the same time other modifications are submitted pursuant to the annual review. The plan should set forth the same information as required under the business plan development guidelines, of steps the participant will take to continue its business development after the expiration of its program term.

Graduation from the Business Assistance Program

Upon determination by DDOT that the participant is eligible for graduation from the developmental program, the DBE/SS Manager will notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

Discontinuance from Participation in the Business Assistance Program

DDOT retains the right for a participant to discontinue participation in the Business Assistance Program prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance.

Also, DDOT retains the right to discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the

type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. DDOT will take such action if over a 2-year period a DBE firm exhibits such a pattern.

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

Lisa Gregory, Chief,
Office of Civil Rights
District Department of Transportation
55 M Street, SE, Third Floor
Washington, DC 20003
Telephone: 202-671-2628
Email: Lisa.Gregory@dc.gov

Linda Fennell, Manager
DBE Supportive Services
Office of Civil Rights
District Department of Transportation
55 M Street, SE, Third Floor
Washington, DC 20003
Telephone: 202-645-8620
Email: Linda.Fennell@dc.gov

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

Business Opportunity and Workforce Development Center

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

[Section 26.35\(b\)\(1-3, The Mentor-Protégée Program](#)

[DDOT has an approved Mentor-Protégée Program that is incorporated an element of the Small Business Program. Only](#) firms that are certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

During the course of the mentor-protégé relationship, DBE credit will not be awarded 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

DDOT will not award DBE credit will not be awarded to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

For purposes of making determinations of business size under this part, protégé firms will not be treated as affiliates of mentor firms, when both firms are participating under a DDOT- approved mentor-protégé program.

Section 26.37 Monitoring and Enforcement Mechanisms

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

1. DDOT will bring to the attention of the US Department of Transportation/OIG any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. DDOT will consider similar action under our own legal authorities, including responsibility determinations in future contracts. **(Attachment 3)** lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in our procurement activities.
 - a. Breach of contract action, pursuant to the terms of the contract;
 - b. Withholding of partial estimates until compliance is achieved.

In addition, the federal government has available several enforcement mechanisms that it may apply to firms participating in the DBE problem including, but not limited to, the following:

- a. Suspension or debarment proceedings pursuant to 49 CFR, Part 26
 - b. Enforcement action pursuant to 49 FR Part 31
 - c. Prosecution pursuant to 18 USC 1001
3. DDOT **provides** a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This is accomplished by a multi-level process.
 - a. First, the Sr. EO Local and Federal Compliance Officer meets with and **educates** the project engineer and project management team as to which DBEs are expected to work on each project; what tasks are expected to be completed, and for what sum of money.
 - b. The Federal Sr. EO Local and Federal Compliance Officer or its designate will regularly attend progress meetings and/or receive bi-weekly reports from the field.
 - c. The Federal Sr. EO Local and Federal Compliance Officer or its designate will visit the project work site at times which, according to the on-site management team, the DBE firms are expected **to perform**. The site visits will be unannounced and will be memorialized by the completion of a site visit report.
 - d. Reports and photographs may be made available electronically to all members of the staff of the OCR.
 - e. **During the course of the contract performance period**, OCR will maintain regular communication with the DBE contractor and sub-contractor to inquire about work actually completed, and anticipated to be completed

4. During the performance of contracts, monitoring is conducted by the Project Engineer or their designate in conjunction with the Federal Sr. EO Local and Federal Compliance Officer to ensure that: a) the type of work and the value of work performed is consistent with work stated in the scope of work; b) the DBE is performing a “commercially useful function” by actually performing, managing and supervising the work with its own workforce, and c) the equipment utilized is either owned or leased by the DBE.
5. The CUF forms completed by the Federal Sr. EO Local and Federal Compliance Officer and/or the project engineer or its designate, as maintained in the compliance system and/or the project file shall serve as written certification by DDOT that contracting records have been reviewed and work monitored relative to distinct elements of each DBE subcontract.
6. Currently, DDOT requires prime contractors to report all DBE payment activities electronically through its electronic reporting system. The system allows DDOT to maintain a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), in addition to commitments. DDOT’s Federal Sr. EO Local and Federal Compliance Officer will monitor the payments and verify receipt of subcontractor payments from the Prime Contractor to insure compliance in accordance with the District’s prompt payment provisions. DDOT requires each subcontractor to acknowledge receipt of payments identified as made to the subcontractor in the electronic compliance system by registering the date the subcontractor receives the payment from the Prime Contractor. In addition, this information is also verified again at contract closed by requiring the Prime and the DBE subcontractor to complete the DBE Contractor Payment form (See Attachment 3B).
7. DOT maintains a running tally of actual payments to DBE firms for work committed to them at the time of contract award. Once per month, prime contractors shall submit copies of canceled checks, front and back paid to DBE firms, as verification that each firm has been paid in accordance with their contractual arrangement with the prime contractor. Periodically, DDOT may request that DBE firms complete a payment confirmation declaration, affirming that the DBE firm has, in fact, received payments committed to them at the time of contract award.

49 CFR 26.39 SMALL BUSINESSES

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

Federal Disadvantaged Business Enterprise Small Business Program

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

The Disadvantaged Business Enterprise Program will include race neutral contracting requirements in an effort to facilitate competition by all small businesses to achieve the objectives of the program. For the purposes of implementing this program a Small Business is defined (13 CFR 121) as a firm that:

- Is organized for profit;
- Has a place of business in the United States;

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

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

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

(Table 1- SBA General Size Standards)

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

Industry Group	Size Standard
Water, Sewer Line and Related Structures	\$33.5 million
Heavy Highway, Bridge & Civil Engineering	\$33.5 million
Poured Concrete Foundation and Structure Contractors	\$14.0 million
Structural Steel and Precast Concrete Contractors	\$14.0 million
Electrical Contractors & Other Wiring Installation Contractors	\$14.0 million
Painting Contractors	\$14.0 million
Site preparation Contractor (Demolition/Excavation Contractors)	\$14.0 million
Ready-mix Concrete/Asphalt Mixture Manufacturing	500 Employees
Brick, Stone, and Related Construction Material Merchant Wholesalers	100 Employees
Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	100 Employee
General Freight Trucking, Local (Hauling)	\$25.5 million
Engineering/Architect Services	\$4.5 million
Administrative Management and General Management Consulting Services	\$7.0 million

Landscaping Services	\$7.0 million
<u>Small Business Size Standards matched to NAICS</u>	
Specific size standards for Small Business in procurement solicitations should be cross referenced to the SBA website: (http://sba.gov/category/navigation-structure/contracting-officials/eligibility-size-standards).	

DDOT is committed to the utilization of small businesses and affording said businesses the maximum opportunity to participate and compete in DDOT's procurement opportunities. In order to facilitate competition and maximize participation by small businesses, DDOT's Director will establish a team made up of a cross section of the agency to refine and implement the small business program including the following provisions:

1. DDOT will avoid unnecessary and unjustified bundling of contract requirements. The federal regulations define bundling as the "consolidation of two or more procurement requirements for goods or services previously provided or performed under separate smaller contracts into a solicitation of offers for a single contract that is likely to be unsuitable for award to a small business." A number of factors are considered in determining whether the single contract is "unsuitable" for a small business, including the nature of performance requirements, the size of the contract, and geographic dispersion of performance sites. 15 U.S.C. 632(o) (2); FAR 2.101; 13 CFR 125.2(d). This definition does not capture all of DDOT's procurements. Some projects are bundled because it is most efficient to bundle them such as bridge projects. Efforts will be made annually to review the obligation plan for possible opportunities. The small business team will review projects prior to design to determine what aspects of the project can be separated for small business;
2. Utilize DDOT's obligation plan (The plan for obligating DDOT's capital projects) to develop small business utilization for upcoming contracting opportunities. DDOT's small business team will review the obligation plan annually to identify at least two projects to be set-aside. Both construction and engineering services projects will be considered. Contracts valued **under \$3 million** will be targeted with bonding and other requirements taken into consideration;
3. Identify small business opportunities within the established threshold on a contract by-contract basis on USDOT assisted construction contracts and on non-construction procurements (i.e. contracts for services, supplies, and equipment). DDOT will review annually the following areas of work: street signs and street construction/electrical (traffic signals installation, running conduits, light post installation) for possible opportunities for small businesses. Task orders that are under \$100,000 (design,

planning and public support) will be offered to small businesses first. DDOT will screen construction management contracts for possible opportunities for small businesses.

4. Coordinate with Program Managers and or COTR to monitor payments to prime small business contractors by (a) reviewing letters of intent and subcontractor schedules of participation to assess the tasks awarded and dollar value involved; (b) maintain a reconciled running tally of payments for the duration of the work to be performed by subcontractors; (c) require prime small business contractors to submit notification of payments of their subcontractors on a monthly basis or as is appropriate considering the type of work being performed or the relevant length of the contract in question. In any event, the notification shall be made to DDOT's Office of Procurement – DBE Liaison at the time of the actual payment by the prime small business concern to the subcontractors; (d) require all subcontractors to provide notification, to DDOT's Office of Procurement - DDOT's DBE Liaison, of receipt of payment from the prime small business concern contractors at the time that payment is actually received; (e) review the prime small business contractors' payment documents and subcontractor receipt of payment documents; (f) verify payment and receipt of payment as required and (g) credit small business concern participation toward the contract threshold only when payments are actually made to small businesses.
5. Report to USDOT- FHWA small business participation including payments actually made to small businesses on USDOT assisted contracts, when required. DDOT will track semi-annually performance and provide this information as needed to FHWA and FTA.
6. DDOT will implement extensive outreach activities and develop new partnerships to provide technical assistance and financial institutions such as: The Industrial Bank of Washington, the National Community Reinvestment Coalition and the U.S. Small Business - Small Business Resource Centers.
7. Make available an updated on-line directory identifying all firms eligible to participate as small business concerns in the Program. The listing for each small business concern shall include its company name, address, contact person, email address, telephone/facsimile and NAICS Codes describing types of work the firm has been certified to perform. These directories will be made available at the following website - www.DDOT.com.
8. DDOT will ensure that implementation; monitoring and enforcement mechanisms are in place to verify that the work committed to small business concerns at contract award is actually performed by small businesses. All prime small business contractors shall submit monthly progress reports on small business utilization to the DDOT's Office of Procurement- DBE Liaison on a form provided by the Office of **Contracts and Procurement** for this purpose. Enforcement measures may include rescission of contract awards (in whole or in part), administrative fines, debarment from bidders' lists, suspensions from awards, sanctions, referral to appropriate federal authorities in instances of suspected

fraud, misrepresentation, misappropriation of funds, theft of services and other activities that warrant criminal referrals or other action; and other appropriate administrative actions.

9. On contracts that do not include DBE contract goals, small business firms will be considered that meet the designated size standard requirements and can reasonably perform, rather than self-perform all the work involved.
10. Identify alternative acquisition strategies and structure procurements to facilitate the ability of consortia or joint ventures by consisting small businesses, including DBEs, to compete for and perform as prime contracts. DDOT will review annually the following areas of work: street signs and street construction/electrical (traffic signals installation, running conduits, light post installation) for possible opportunities for small business. A minimum of five (5) task orders that are under \$100,000 (design, planning and public support) will be offered to small businesses first. DDOT will screen construction management contracts for possible opportunities for small businesses.
11. DDOT will institute a Mentor/Protégé program for small business. A draft copy of the proposal is attached. Our plan will incorporate best practices from USDOT's recently established Mentor Protégé Pilot Program. DDOT will establish an annual scholarship for small businesses in need of business assistance. Scholarship funds are being identified to support the business owners' technical assistance. DDOT in conjunction with business schools and large construction firms will sponsor small businesses participation in certificate programs at building capacity, and improving efficiency and productivity.

DDOT anticipates implementing the Program within the required nine month timeframe.

Section 26.43 Set-Asides or Quotas

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

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

The District Department of Transportation (DDOT) does not use quotas in any way in the administration of this DBE program.

Section 26.45 Overall Goals

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

In accordance with Section 26.45(f) The District Department of Transportation (DDOT) submit its overall goal to USDOT on August 1 triennially in accordance with the FHWA/FTA's schedule for Group B. Before establishing the overall triennial goal, DDOT will consult with DBE stakeholder groups in the Metropolitan Washington business community, such as the Metropolitan Washington Chapter of the

National Association of Minority Contractors (NAMC), Washington, DC Chapter of the Conference of Minority Transportation Officials (COMTO), the Greater Washington Hispanic Chamber of Commerce, National Association of Women Business Owners -- Greater DC, the Metropolitan Washington Chapter, American Road & Transportation Builders Association (ARTBA), other community-based organizations and other interested parties to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and DDOT's efforts to establish a level playing field for the participation of DBEs.

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

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

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

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

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

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

Section 26.47

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

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

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

If DDOT's Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FHWA/FTA demonstrates that current trends make it unlikely that the agency will achieve DBE awards and commitments that would be necessary to allow DDOT to meet its overall goal at the end of the fiscal year, FHWA, FTA, as applicable, may require DDOT to make further good faith efforts, such as by modifying the race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year. **(Attachment 5)**

Section 26.49 Transit Vehicle Manufacturers Goals

The District Department of Transportation (DDOT) will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, DDOT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the program.

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 6 to this program. This section of the program will be updated annually when the goal calculation is updated.

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

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

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

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

DBE participation on a prime contract exceeding a contract goal; and DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

The District Department of Transportation (DDOT) will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. **(Attachment 7)**

Section 26.51(d-g) Contract Goals

DDOT will use contract goals to meet any portion of the overall goal. DDOT does not project being able to meet **the overall goal** using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means. **However, in accordance with 49 CFR Part 26**, the District Department of Transportation Office of Civil Rights will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

DDOT will express our contract goals as a percentage of the 80 percent (Federal-share) amount of a DOT-assisted contract. Contract goals will be set by the DDOT OCR's Federal Sr. EO Local and Federal Compliance Officer or an assigned designee supervised by DDOT's Chief of the Office of Civil Rights. The methodology for setting individual contract goals will be conducted in accordance to 49 CFR Part 26.45. Documentation of the goal setting process for the individual project will be maintained in the Office of Civil Rights as a part of the project file.

The Chief of the Office of Civil Rights or their designee will provide the goal to the DDOT project engineer and/or the designated project manager for review and concurrence. In the event that additional information is provided or other conditions impact the feasibility of the established goal, i.e., reduced funding, change orders that either increase or decrease the project total, the Chief of the Office of Civil Rights retains the right to determine whether or not an adjustment is needed. The adjustment of the project goal is not automatic and the impact of such adjustment on the scope of work to be performed by DBEs and the legal basis for the adjustment is the utmost priority in OCR's consideration.

Mega Projects, P3 projects, i.e., projects over \$100m or more, will not be included in the overall project goal as to not impede DDOT's ability to provide DBEs business opportunities on these projects.

The District Department of Transportation (DDOT) will express our contract goals as a percentage of the total estimated dollar value of the contract, if the project receives **FHWA or FTA** funds. DDOT does not set goals exclusively on the **FHWA** portion, but in the future, DDOT will consider calculating contract goals as a percentage of the total amount of USDOT-assisted contracts.

Section 26.53 Good Faith Efforts Procedures

Demonstration of good faith efforts (26.53(a) & (c))

The obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. The offeror can accomplish this task by providing either of the following:

- Documents that it has obtained enough DBE participation to meet the goal (see DBE Utilization Form, **Attachment 6**); or
- Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so.

In accordance with 49 CFR part 26.53, bidders who are unable to document that it has obtained enough DBE participation to meet the goal, must provide documentation showing that it made adequate good faith efforts to meet the goal, even though it did not succeed. Examples of good faith efforts are found in Appendix A to Part 26.

Information to be submitted (26.53(b))

The District Department of Transportation (DDOT) treats bidder/offers' compliance with good faith efforts' requirements as a matter of responsibility.

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

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

The following personnel are responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive:

William Teague, Chief Procurement Officer
District Department of Transportation

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

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

DBE UTILIZATION FORM

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

1. Enter the Project Number or Solicitation Number
2. Enter the DBE Goal noted in the Contract/Solicitation documents
3. Enter the Project Name as it appears on the Contract/Solicitation documents
4. Enter the Contract Type, i.e., Construction, Design, Construction Management, etc.
5. Contract Award Amount
6. Enter the value of the Contract Award Amount multiplied by DBE Goal Percentage
7. Indicate whether this is an original DBE Plan or a request for modification due to change in circumstances or as a result of denial of an original plan.
8. Name & Address of DBE: Enter the DBE Name and Address
9. Description of Work to be completed by DBE: Enter a condensed version of the scope of work to be performed by the DBE. Specify type of work and the percentage of the type of work to be performed by the DBE, i.e., Type: Trucking, Supplies, Material, Labor or a combination thereof. Please be reminded that if DBE subcontractor's scope is to furnish Supplies/Material without installation cost must be calculated at 60% of the total contract value to be applied towards DBE Goal!
10. Estimated Dollar Value of DBE Participation: Enter the Estimated Contract Value to be awarded to the DBE for the work to be performed. This Contract Value should appear on the Letter of Intent. If the DBE is a supplier, indicate the amount of expenditures allocated for services separate from supplies.
11. % of DBE Participation: Divide the Contract Value noted on the Letter of Intent by the Contract Value awarded by DDOT to determine the % of DBE participation for each DBE listed.
12. Totals: Enter the total of the "Estimated Dollar Value of DBE Participation" and "% of DBE Participation" columns.
13. Prime Contractor Name and the Authorized Representative's name
14. Signature and date of the Authorized Representative

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

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

Administrative reconsideration (26.53(d))

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

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

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with The District Department of Transportation (DDOT)'s reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. The District Department of Transportation (DDOT) will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

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

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

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

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

Good Cause for Termination/Substitution of DBE Firm (26.53(f)(3)(i)-)

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

(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) DDOT-OCR has determined that the listed DBE subcontractor is not a responsible contractor;

(vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to DDOT-OCR written notice of its withdrawal;

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

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

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

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

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

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

(g) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, DDOT-OCR must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal DDOT-OCR established for the procurement.

The requirement of this provision does not exclude DBE bidders/offers for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, DDOT-OCR counts the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

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

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

Specifically, if the contractor fails or refuses to comply in the time specified, DDOT's contracting officer will issue a stop order of all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the contracting officer may issue a termination for default proceeding.

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of the District Department of Transportation (DDOT) to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offers, including those who qualify as a DBE. A DBE contract goal of ____ percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (Attachment 5), to meet the contract goal for DBE participation in the performance of this contract.

The bidder/offeror will be required to submit the following information: (1) the names and addresses of DBE firms that will participate in the contract; (2) a description of the work that each DBE firm will perform; (3) the dollar amount of the participation of each DBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the DBE that it is participating in the contract as provided in the commitment made under (4); and (5) if the contract goal is not met, evidence of good faith efforts.

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

Section 26.55 Counting DBE Participation

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

DBE Approval

1. Every DBE proposed for use on a contract towards meeting a DBE goal, requires approval by DDOT's Office of Civil Rights (OCR). Criteria for approval of participation of a DBE includes that they shall be certified under the MWUCP either with DDOT or WMATA. Work codes, or if not applicable, NAICS codes or business descriptions which are consistent with the work activities being performed under the contract and provide a commercially useful function will be considered during the DBE approval process.
2. Upon closing of the bids, DDOT's Office of Contract and Procurement (OCP) will notify OCR of the pending responsive bidder.
3. Within five (5) working days subsequent to bid opening, DDOT requires the bidder/offeree to a complete DBE plan utilizing the DBE Utilization Form (See Attachment____) containing a list of DBE firms to be utilized on this project or documentation demonstrating good faith efforts to meet the goal on this project. The DBE plan must be submitted to:

District Department of Transportation
Office of Contracting and Procurement
55 M Street S.E. 7th Floor
Washington, DC 20003

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

Modification of DBE Utilization Plan

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

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

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

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

b. The proposed modified DBE Utilization plan shall be reviewed and approved/denied keeping within the requirements set forth in 49 CFR 26.53.

c. The responsibility is on the prime contractor to get approval from OCR regarding DBE firms. If the prime contractor has not received written approval, no credit will be credited for DBE participation.

d. The process for completing the modified DBE Utilization Form is as follows:

1. Check Modified DBE Plan on the DBE Utilization Form
2. Enter the Project Number or Solicitation Number
3. Enter the DBE Goal noted in the Contract/Solicitation documents
4. Enter the Project Name as it appears on the Contract/Solicitation documents
5. Enter the Contract Type, i.e., Construction, Design, Construction Management, etc.
6. Contract Award Amount
7. Enter the value of the Contract Award Amount multiplied by DBE Goal Percentage
8. Indicate whether this is an original DBE Plan or a request for modification due to change in circumstances or as a result of denial of an original plan.
9. Name & Address of Modified DBE firm: Enter the DBE Name and Address
10. Description of Work to be completed by the modified DBE: Enter a condensed version of the scope of work to be performed by the DBE. Specify type of work and the percentage of the type of work to be performed by the DBE, i.e., Type: Trucking, Supplies, Material, Labor or a combination thereof. Please be reminded that if DBE subcontractor's scope is to furnish Supplies/Material without installation cost must be calculated at 60% of the total contract value to be applied towards DBE Goal!
11. Estimated Dollar Value of Modified DBE Participation: Enter the Estimated Contract Value to be awarded to the DBE for the work to be performed. This Contract Value should appear on the Letter of Intent. If the DBE is a supplier, indicate the amount of expenditures allocated for services separate from supplies.
12. % of Modified DBE Participation: Divide the Contract Value noted on the Letter of Intent by the Contract Value awarded by DDOT to determine the % of Modified DBE participation for each DBE listed.
13. Totals: Enter the total of the "Estimated Dollar Value of DBE Participation" and "% of DBE Participation" columns.
14. Prime Contractor Name and the Authorized Representative's name
15. Signature and date of the Authorized Representative

To be granted "FINAL APPROVAL", prime contractor submits a copy of the modified DBE firm's Certification Letter, DBE Quote to the Contractor and the Letter of Intent for all DBEs listed on the

modified seven (7) business days prior to the DBE firm's expected time of performance. The modified DBE Utilization Plan will be signed by DDOT OCR's Federal Compliance Officer or an assigned designee supervised by DDOT's Chief of the Office of Civil Rights.

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

Change Orders/Task Orders

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

DBE Participation Counted Towards Goal 26.55

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

a. When a DBE participates in a contract, DDOT counts only the value of the work actually performed by the DBE toward DBE goals. **Below are the required DBE participation criteria that are allowed for counting purposes:**

1. The entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate);
2. The entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided DDOT-OCR determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services; and
3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

Joint Ventures

b. When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

Commercial Useful Function (CUF)

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

49 CFR §26.55 defines when a DBE is performing a commercial useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.

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

- a. A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function; the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, DDOT-OCR must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
- b. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, DDOT-OCR must examine similar transactions, particularly those in which DBEs do not participate.
- c. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, DDOT-OCR must presume that it is not performing a commercially useful function.
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. DDOT-OCR may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
5. DDOT's decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

Trucking Participation 26.55(d)

In accordance with 26.55(d), DDOT uses the following factors in determining whether a DBE trucking company is performing a commercially useful function:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
3. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
5. The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
6. For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

Materials and Supplies 26.55(e)

e. DDOT counts expenditures for materials and supplies towards DBE goals as provided in the following:

- 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.

The OCR staff will review the DBE firms' NAICS Codes as certified through the MWUCP and, if applicable, with the DBE firms' home state certifying agency.

- 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).

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. With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided DDOT-OCR 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.

h. 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).

i. Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward DDOT-OCR overall goal.

j. 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.

Commercial Useful Function Reviews

1. The contractor is responsible for ensuring that DBEs working on the project perform a commercially useful function (CUF). The contractor shall receive credit toward meeting the assigned DBE goal and payment for DBE commercially useful function performed work only.
2. OCR conducts CUF Reviews on its DOT-assisted projects. The purpose of the CUF review is to determine compliance with the Commercially Useful Function (CUF) requirements of 49 CFR Part 26.55. A CUF must be performed for each DBE on a federally assisted project and should be conducted when the DBE is on-site and working. A CUF must be performed throughout the course of a project.
3. The CUF review/audit will be performed by DDOT OCR staff, its designee, DDOT project engineer or by the project construction management team. CUF reviews will be performed on a routine basis and, under the following circumstances: whenever there is any indication that a DBE may not be performing a CUF; whenever a DBE performs work which varies from the bid items indicated in the contractor's commitment forms; whenever a change in the performance of the DBE occurs; whenever a substitution of work or a change order occurs which affects the work to be accomplished by a DBE; and whenever a replacement or substitution of a DBE occurs.

CUF Process:

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

MANAGEMENT

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

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

WORKFORCE

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

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

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

EQUIPMENT

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

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

MATERIALS

- Did the DBE order its own materials?
- Are invoices for materials and supplies addressed to the DBE?
- Who paid for the materials? Is payment made by a joint check, bearing the DBE and prime contractor's signatures?
- **Are delivery slips to available for inspection to determine the origin, addressee, quantities and firm making the delivery?**
- **Are material invoices available for inspection to determine charges and intended payee and provide indication of firm that order supplies, materials or services?**

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

PERFORMANCE

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

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

Attachment 12. CUF Review Forms - Further details the CUF review process and forms.

When a DBE is initially determined not to be performing a CUF as defined above, the DBE may present evidence to rebut this determination. DDOT OCR will determine if the firm is performing a CUF given the

type of work involved and normal industry practices. Decisions on CUF matters are subject to review by the concerned operating administration () but are not appealable to USDOT.

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

Joint Checks

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

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

- (1) the DBE firms' independence (26.71)(b);
- (2) whether the firm is performing a commercially useful function (26.55(c)(1)); and
- (3) the DBE firms' status as a dealer or a broker which determines the counting of materials and supplies and whether or not the DBE will be responsible for the installation of the materials and supplies or the prime contractor of another third party (26.55(e)(3)).

JOINT CHECK APPROVAL PROCESS

1. Prime contractors and DBEs wishing to use joint check arrangements must submit a request in writing prior to starting work.
2. Prior approval must be obtained from DDOT Office of Civil Rights.
3. Forward the Joint Check request to the Office of Civil Rights using the Joint Check Arrangement Monitoring Form See sample DBE Joint Check Request form in Appendix A.
4. This request must include the following:
 - a. The actual document requesting the arrangement, i.e., the original request presented from the DBE vendor, or DBE.
 - b. The Joint Check Arrangement Monitoring form (should be completed and maintained throughout the joint check arrangement. Please be advised of the following:
 - I. A written joint check agreement among the parties (including the suppliers concerned) should provide full and prompt disclosure of the expected use of joint checks. The agreement should contain all information concerning the parties' obligations and consequences or remedies if the agreement is not fulfilled or a breach occurs.
 - II. Prime contractors and DBE subcontractors must avoid exclusive relationships concerning the use of joint checks. If a prime contractor makes joint checks available

to one DBE subcontractor, the service should be made available to all subcontractors (DBEs and non-DBEs).

- III. Prime contractors and DBE subcontractors that make use of joint checks should limit the use to the procurement of materials needed for a particular purpose at a particular time. Long-term or open-ended joint checking arrangements may suggest a lack of independence for the DBE involved, and are a basis for further scrutiny by DDOT.
- IV. DDOT reserves the right to establish reasonable durational limits on joint checking arrangements that are subject to periodic review and renewal to ensure that the arrangement is not operating in a way that compromises the independence of the DBE.
- V. DBE contractor must retain final decision-making responsibility concerning the procurement of materials and supplies, even when joint checks are involved. The relationship between the DBE and supplier should be established independently and without interference by the prime contractor. The rights of parties to a joint check arrangement to terminate the arrangement should be consistent: for example, if the prime contractor has the right to terminate the arrangement unilaterally, a DBE subcontractor shall have the same right.
- VI. Joint checks issued by the prime contractor must be delivered or mailed to the DBE for presentation and payment to the DBE's suppliers. The prime contractor should not make payment directly to the supplier.

Counting DBE Credit in Joint Check Situations

Regulatory Guidance regarding Counting DBE Credit in Joint Check Situations

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

- To receive DBE credit for performing a commercially useful function with respect to obtaining materials and supplies, a DBE must "be responsible for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself" (emphasis added; 49 CFR 26.55(c)(1)). Only when a DBE meets all requirements of this provision should DBE credit be counted for the procurement of items by the DBE.
- By paying for the material itself, the regulation means that the DBE's own funds are used to pay for the material. As the preamble passage quoted above notes, it is not appropriate for the funds to come "from the other party" (e.g., the prime contractor). The use of joint checks can raise the question of whether the DBE's own funds, as distinct from those of the prime contractor, are really being used to pay for the material.
- To answer this question, a prime contractor and DBE should provide documentation to the recipient showing that the funds used to pay a supplier in fact came from the DBE's own funds. Accounts receivable to the DBE from the prime contractor for the costs of items procured by the DBE from the supplier generally may be regarded as representing the DBE's own funds. If a DBE which has received a joint check from the prime contractor documents that it has been in control of the funds provided in the check and has determined when the supplier or other third party has fulfilled its responsibilities under the contract, the recipient may conclude, absent evidence to the contrary, that the DBE is paying the third party with its own

funds. The recipient should review this documentation before deciding whether to give DBE credit for the items in question.

- As part of the recipient's oversight of contracts on which joint checks are used, it is important to determine whether the requirements of 26.55(c) (1) other than payment from the DBE's own funds are being met. If the other requirements of 26.55(c)(1) are not met, then it is not appropriate to award DBE credit for the use of the items in question.
- Insistence by a prime contractor that a DBE must use a particular supplier or pay a specific price for an item is likely to be inconsistent with these requirements.
- If there is a significant disparity with respect to quantity or cost of items a DBE procures using a joint check arrangement, compared to the size of the contract and the expected ability of the DBE to obtain the items, the recipient should look carefully to ensure that commercially useful function requirements for counting DBE credit are being met.
- A DBE obtaining items for a construction contract normally should install them as well. If the DBE obtains the items but the prime contractor or another party installs them, the DBE credit awarded may be limited to the fee or commission obtained by the DBE (see 26.55(e)(3)).

DBE Independence in Joint Check Situations

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

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

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

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

Appendix A – Good Faith Efforts

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

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to

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

- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own force.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- (a) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

(b) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.

2. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
3. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
4. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
5. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 - 26.73 Certification Process

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

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

Luisa Portillo, Equal Opportunity, Certification Specialist

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

Catherine Svoboda, DBE & Compliance Specialist

WMATA - DBE
600 Fifth Street, NW, 3C
Washington, DC 20001
202-962-1854
csvoboda@wmata.com
http://www.wmata.com/business/disadvantaged_business_enterprise/dbe_search.cfm

Our certification application forms and documentation requirements are found in **Attachment 7** to this program.

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

The District Department of Transportation (DDOT) is a member of the **Metropolitan Washington Unified Certification Program (MWUCP)**. DDOT is a partner with the Washington Metropolitan Washington Area Transit Authority (WMATA).

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

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

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

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

- 1) Firms will be notified by their initial certification anniversary date via email and certified letter from DDOT/WMATA certification specialists 90 days prior to their 3-year review date;
- 2) For firms that we have certified or reviewed and found eligible under part 26, we will again review their eligibility on the anniversary date every three years and not to exceed six (6) years. These reviews will include the following components:
 - a. An on-site visit to the offices of the firm.
 - b. If the firm is a corporation, analyze the ownership of stock in the firm;
 - c. Analyze the bonding and financial capacity of the firm;
 - b) Determine the work history of the firm, including contracts it has received and work it has completed;
 - c) 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;
 - d) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program.

"No Change" Affidavits and Notices of Change (26.83(j))

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

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

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

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

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

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

Notices of Change

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

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

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

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

Section 26.85 Interstate Certification.

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

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

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

To retrieve these documents you can visit: dbe.ddot.dc.gov

Submit the complete application package to:

District Department of Transportation
Office of Civil Rights
55 M Street, SE, 3rd Floor
Washington, DC 20003
Attention: Luisa Portillo
Telephone: 202-671-0630
Luisa.Portillo@dc.gov

Interstate Certification Process 26.85(d)

(d) As State B, when DDOT-OCR receives from an applicant firm all the information required by paragraph (c) of this section, we must take the following actions:

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

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

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

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

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

(ii) The firm may elect to respond in writing, to request an in-person meeting with DDOT-OCR's decision maker to discuss DDOT-OCR's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B, DDOT-OCR must schedule the meeting to take place within 30 days of receiving the firm's request.

(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 DDOT-OCR's notice. The firm is not otherwise responsible for further demonstrating its eligibility to DDOT-OCR.

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

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

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

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

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

(f)

(1) When as a UCP, when DDOT-OCR denies a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. DDOT 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, DDOT will check the DOCR Web site at least once every month to determine whether any firm that is applying for certification or that is currently already certified is on the list.

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

Section 26.86 Denials of Initial Requests for Certification

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

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

- c. When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under §26.89.

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. **Attachment 8** to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, we have determined that a decertification panel comprised of DDOT and WMATA personnel who are knowledgeable of the regulations will conduct an informal hearing and serve as the decision-maker in de-certification proceedings. We have established an administrative "firewall" to ensure that the certification panel will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding).

Section 26.89 Certification Appeals

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

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

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

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

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

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

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

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

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

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

SUBPART F - COMPLIANCE AND ENFORCEMENT

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

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

(a) Availability of records.

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

(2) Notwithstanding any provision of Federal or state law, DDOT is prohibited from releasing any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, DDOT will transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.

(b) Confidentiality of information on complainants. Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

(c) **Cooperation.** All participants in the DDOT'S DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

(d) **Intimidation and retaliation.** DDOT, its contractor, or any other participant in the program, must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part. Violation of this prohibition will result in noncompliance with this part.

FREEDOM OF INFORMATION ACT REQUESTS

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

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

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

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

For more information on how to file an FOIA request, visit the [Government Resource Center](#).

FOIA Officer

Nana Bailey-Thomas

The District Department of Transportation (DDOT)

55 M Street, SE, Suite 700

Washington , DC 20003

nana.bailey@dc.gov

Phone: (202) 673-6593 **Fax:** (202) 673-2355

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

ATTACHMENTS

ATTACHMENTS

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

Attachment 1
Organizational Chart

Attachment 2

DBE Directory

Attachment 3
Monitoring and Enforcement Mechanisms
Form A, B, C

Attachment 4
Overall Goal Calculations for FHWA/FTA

Attachment 5

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

Attachment 6

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