



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

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



**d. Office of the Director**

**DISADVANTAGED BUSINESS ENTERPRISE  
POLICY STATEMENT**

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

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

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

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

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

A handwritten signature in blue ink, appearing to read 'Terry Bellamy', is written over a horizontal line.

Terry Bellamy, Director  
District Department of Transportation

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

**TABLE OF CONTENTS**

**1. GENERAL REQUIREMENT**

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

**2. ADMINISTRATIVE REQUIREMENTS**

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

**3. GOALS, GOOD FAITH EFFORTS AND COUNTING**

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

**4. CERTIFICATION STANDARDS**

a. Certification Process.....	26
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**5. CERTIFICATION PROCEDURES**

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

e. Certification of Appeals.....28

**6. COMPLIANCE AND ENFORCEMENT**

a. Information, Confidentiality, Cooperation.....28

b. Freedom of Information Act Requests.....29

**ATTACHMENTS**

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

## **SUBPART A - GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

DDOT is the recipient of federal-aid **Transit Authority** funds authorized under Titles I, III, V, and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in title 49, U.S. Code, or titles I and II, and V of the Teas-21, Pub. L 105-178.

### **Section 26.5 Definitions**

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

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

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

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

### **Section 26.11 Record Keeping Requirements**

Reporting to USDOT: 26.11(b)

DDOT will report DBE participation to USDOT as follows:

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

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

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

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

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

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

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

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

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

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

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

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

#### **Assurance: 26.13(a)**

DDOT shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. DDOT shall take all necessary and reasonable steps under **49 CFR Part 26** to ensure nondiscrimination in the award and administration of USDOT-assisted contracts (**See Attachment A-1**). DDOT's DBE Program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation, and failure to carry out its terms shall be treated as a violation of

this agreement. Upon notification to DDOT of its failure to carry out its approved program, the Department may impose sanction as provided for under part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

**Contract Assurance: 26.13b**

DDOT will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of USDOT assisted contracts (**See Attachment A-1**). Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as DDOT deems appropriate.

**SUBPART B - ADMINISTRATIVE REQUIREMENTS**

**Section 26.21 DBE Program Updates**

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

**Section 26.23 Policy Statement**

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

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

## DDOT DBE POLICY STATEMENT MAILING LIST

- 1. Legion Design/Campbell Associates, Chartered**  
4301 Connecticut Avenue N.W. Suite 240  
Washington, D.C. 20008  
**Attention: Endrea Frazier, Vice President**  
Architect/Engineers Council, President  
Phone: 202/833-4444  
Email: [endrea.frazier@legiondesign.com](mailto:endrea.frazier@legiondesign.com)
- 2. Transportation Development Foundation**  
Metropolitan Washington American Road & Transportation Builders Association  
(ARTBA)  
1219 – 28<sup>th</sup> Street N.W.  
Washington, D.C. 20007  
**Attention: Hank Webster**  
Phone: 202/289-4434  
E-mail: [hwebster@artba.org](mailto:hwebster@artba.org)
- 3. Progressive Transportation Services Administration (PTSA)**  
District Department of Transportation (DDOT)  
55 M Street S.E. 5<sup>th</sup> Floor  
Washington, D.C. 20003  
**Attention: Carl Jackson, Director**  
Phone: 202/671-4617  
E-Mail: [carl.jackson@dc.gov](mailto: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](mailto:linda.fennell@dc.gov)

## Section 26.25 DBE Liaison Officer (DBELO)

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

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

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that DDOT complies with all provisions of 49 CFR Part 26. The DBELO has direct, independent access to the agency Director concerning DBE program matters. An **organization chart** displaying the DBELO's position in the organization is found in **Attachment 1** to this program.

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

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

**Other personnel responsible for DBE Program implementation:**

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

**Section 26.27 DBE Financial Institutions**

It is the policy of DDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contract to make use of these institutions. DDOT has made the following efforts to identify and use such minority institutions. **Attachment 3:**

**MINORITY FINANCIAL INSTITUTIONS**

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

## **Section 26.29 Prompt Payment Mechanisms**

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

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from DDOT. The prime contractor agrees further to return fifty percent (50%) of retainage payments to each subcontractor when the sub-contractor has completed 50% of the agreed upon work. Remaining retainage is to be returned to the sub-contractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of DDOT's Office of Contracting and Procurement. This clause applies to both DBE and non-DBE subcontracts.

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

### **Retainage**

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

Option Three allows:

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

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

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

## **Section 26.31 Directory**

### **DBE Directory:**

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

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

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

***Luisa Portillo, Equal Opportunity/DBE Program Specialist***

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

***Glenda Payne, Equal Opportunity/DBE Program Specialist***

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

**Section 26.33 Overconcentration**

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

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

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

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

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

**Section 26.35 Business Development Programs**

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

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

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

**Business Opportunity and Workforce Development Center**

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

**Section 26.37 Monitoring and Enforcement Mechanisms**

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

1. DDOT will bring to the attention of the US Department of Transportation/OIG any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109.
2. DDOT will consider similar action under our own legal authorities, including responsibility determinations in future contracts. **Attachment 4**
  - a. Breach of contract action, pursuant to the terms of the contract;
  - b. Withholding of partial estimates until compliance is achieved.

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

- a. Suspension or debarment proceedings pursuant to 49 CFR, Part 26
  - b. Enforcement action pursuant to 49 FR Part 31
  - c. Prosecution pursuant to 18 USC 1001
3. DDOT will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by a multi-level process. First, the DBE Compliance Specialist will

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

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

### **Monitoring Payments to DBEs**

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

DDOT will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation. Prime Contractors are required to submit copies of cancelled check payments to DBEs on a monthly basis.

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

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

## 49 CFR 26.39 SMALL BUSINESSES

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

### **Federal Disadvantaged Business Enterprise Small Business Program**

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

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

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

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

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

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

(Table 1- SBA General Size Standards)

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

<b>Industry Group</b>	<b>Size Standard</b>
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
<b><u>Small Business Size Standards matched to NAICS</u></b>	
Specific size standards for Small Business in procurement solicitations should be cross referenced to the SBA website: ( <a href="http://sba.gov/category/navigation-structure/contracting-officials/eligibility-size-standards">http://sba.gov/category/navigation-structure/contracting-officials/eligibility-size-standards</a> ).	

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

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

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

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

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

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

### **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

#### **Section 26.43 Set-asides or Quotas**

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

#### **Section 26.45 Overall Goals**

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

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

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

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

Normally, we will issue this notice by June 1 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 DOT will include a summary of information and comments received during this public participation process and our responses.

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

#### **Section 26.47**

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

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

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

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

### **Section 26.49 Transit Vehicle Manufacturers Goals**

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

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

#### **Race-Neutral & Race Conscious Participation**

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

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

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

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

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

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

DDOT will use contract goals to meet any portion of the overall goal DDOT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race-neutral means.

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

DDOT will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and to Section 26.51(a-c) Breakout of Estimated Race-Neutral & Race-Conscious Participation.

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

## **Section 26.53 Good Faith Efforts**

### **Documentation of Adequate Good Faith Efforts**

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

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

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

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

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

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

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

(b) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
2. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
  3. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
  4. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

5. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

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

Robert Ballard, Chief Procurement Officer  
District Department of Transportation

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

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

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

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

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

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

#### **Administrative reconsideration (26.53(d))**

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

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

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

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

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

DDOT will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. We will require the prime contractor to notify the DBE Liaison Officer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation.

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

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

#### **Sample Bid Specification:**

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

defined in Appendix A, 49 CFR Part 26 (Attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

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

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

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

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

#### **DBE Approval**

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

#### **DBE Participation**

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

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

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

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

### **Commercially Useful Function (CUF) Reviews**

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

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

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

Office of Civil Rights  
District Department of Transportation  
55 M Street, SE, 3<sup>rd</sup> floor  
Washington, DC 20003  
(202) 299-2190 [Mohammed.Kabir@dc.gov](mailto:Mohammed.Kabir@dc.gov)

## SUBPART D - CERTIFICATION STANDARDS

### Section 26.61 - 26.73 Certification Process

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

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

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

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

## SUBPART E - CERTIFICATION PROCEDURES

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

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

### Section 26.83 Procedures for Certification Decisions

#### Re-certifications 26.83(a) & (c)

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

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

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

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

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

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

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

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

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

### **Section 26.85 Denials of Initial Requests for Certification**

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

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

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

### **Section 26.89 Certification Appeals**

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

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

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

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.109 Information, Confidentiality, Cooperation**

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

## **FREEDOM OF INFORMATION ACT REQUESTS**

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

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

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

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

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

### **FOIA Officer**

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

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

### Monitoring Payments to DBEs

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

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

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

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

Office of Civil Rights

District Department of Transportation

55 M Street, SE, 3<sup>rd</sup> floor

Washington, DC 20003

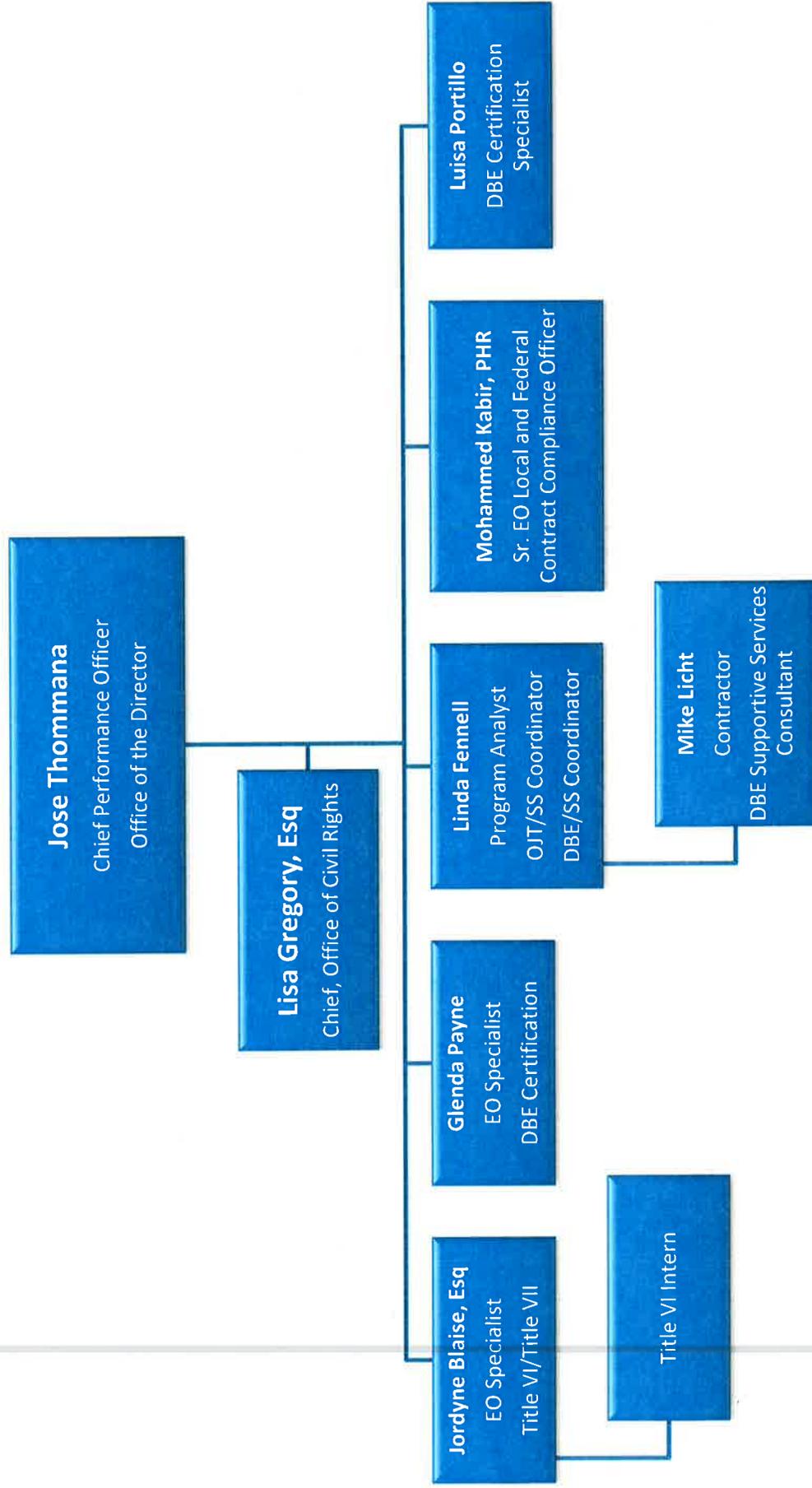
(202) 299-2190 [Mohammed.Kabir@dc.gov](mailto:Mohammed.Kabir@dc.gov)

## ATTACHMENT

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

**ATTACHMENT 1  
ORGANIZATIONAL CHART**

# District Department of Transportation Office of Civil Rights Organizational Chart



**ATTACHMENT 2**  
**DBE DIRECTORY**

## DDOT DBE DIRECTORY

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

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

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

***Luisa Portillo, Equal Opportunity/DBE Program Specialist***

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

***Glenda Payne, Equal Opportunity/DBE Program Specialist***

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

**ATTACHMENT 3**  
**MINORITY FINANCIAL INSTITUTIONS**

## MINORITY FINANCIAL INSTITUTIONS

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

## **ATTACHMENT 4**

### **REQUIRED CONTRACT PROVISIONS AND MONITORING**

## **DBE Federal-Aid Contract Provisions Supplemental Information**

### **1. Statement of Non-Discrimination**

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

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

### **2. Allowable Sanctions as a Result of Non-Compliance**

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

#### **Sanctions against DBE**

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

#### **Sanctions against Prime Contractor/Consultant**

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

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

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

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

DDOT will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.109. We also will consider similar action under our own legal authorities, including responsibility determinations in future contracts.

### **3. Joint Check Approval Requirements**

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

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

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

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

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

This request must include the following:

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

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

Please be advised of the following:

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

#### 4. Termination for Good Cause Only

Effective February 28, 2011

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

##### WHAT CONSTITUTES GOOD CAUSE?

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

##### WHAT DOES NOT CONSTITUTE GOOD CAUSE

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

##### REQUEST TO TERMINATE FOR GOOD CAUSE

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

**ATTACHMENT 5**

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



## Office of Civil Rights

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

### MANAGEMENT

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

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

### WORKFORCE

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

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

### EQUIPMENT

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

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

### MATERIALS

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

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

### PERFORMANCE

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

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



District Department of Transportation

**Office of Civil Rights**

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

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

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

DBE's work observed on this date:

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

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

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

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

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

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

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

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

11. List DBE's equipment used:

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

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

14a. If yes, please explain:

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

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

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

**PRINT NAME**

**Signature:** \_\_\_\_\_

**SIGN NAME**

**Office of Civil Rights**

**NARRATIVE:**

**DETERMINATION:**

REVIEW POSTURE: \_\_\_\_\_ In Compliance \_\_\_\_\_ Non-Compliance

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

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

NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
REVIEWER

**OFFICE OF CIVIL RIGHTS or PROGRAM MANAGER REVIEW AND SIGNATURE:**

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

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

NAME: \_\_\_\_\_ SIGNATURE: \_\_\_\_\_ DATE: \_\_\_\_\_  
OCR/PROGRAM MANAGER

**COMMERCIALLY USEFUL FUNCTION**

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

**ATTACHMENT 6**

**JOINT CHECK ARRANGEMENT  
MONITORING FORM**



## Joint Check DETERMINANTS

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

### **GENERAL CONDITIONS FOR ALLOWANCE:**

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

### **GENERAL CIRCUMSTANCES:**

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

### **RECORDS/DOCUMENTS**

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

### **RED FLAGS**

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

### **RECORDS/DOCUMENTS**

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



### DDOT DBE PROGRAM JOINT CHECK ARRANGEMENT MONITORING FORM

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

<b>Project Number</b>		<b>Project Name</b>	
<b>Prime Contractor</b>		<b>DBE Contractor</b>	
<b>VENDOR</b>		<b>VENDOR TYPE:</b>	

**REASON FOR JOINT CHECK ARRANGEMENT:**

Large empty box for providing the reason for the joint check arrangement.

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

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

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

**SIGNATURE**  
**VERIFIED BY:** \_\_\_\_\_  
**PRINT NAME**

**SIGNATURE**  
**APPROVED BY:** \_\_\_\_\_  
**PRINT NAME**



# **ATTACHMENT 7**

## **DBE CONTRACT PAYMENT FORM & INSTRUCTION**

## DBE Contractor Payment Form Instructions

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

**Contractor:** Name of Contractor

**Contract Value:** Contract Award Amount

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

**Contract No:** Enter the Project/Contract Number

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

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

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

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

### PAYMENT LOG

**Name of DBE:** Enter the DBE Name

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

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

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

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

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

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

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

Appendix B: DBE Contractor Payment Form

# DDOT DBE Contractor Payment Form

OFFICE OF CIVIL RIGHTS

## DBE Contractor Payment Form

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

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

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

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

REPORT PREPARED BY: \_\_\_\_\_

DATE: \_\_\_\_\_

Print Name of Authorized Representative

Signature of Authorized Representative

OFFICE OF CIVIL RIGHTS

**ATTACHMENT 8**

**DBE GOAL METHODOLOGY**

# THE GOVERNMENT OF THE DISTRICT OF COLUMBIA

## Department of Transportation



### GOAL SETTING METHODOLOGY

#### GOAL SETTING METHODS

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

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

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

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

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

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

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

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

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

**Design and Engineering (Consultants) NAICS**

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

**Highway Construction (Contractors) NAICS**

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

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

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

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

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

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

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

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

### HIGHWAY AND STREET CONSTRUCTION

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

### DESIGN AND PROFESSIONAL SERVICES

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

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

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

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

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

**Thus, the base figure is 11.3%.**

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

**Weighted Calculation of the Step 1 Base Figure:**

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

Table 2.

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

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

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

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

Table 4.

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

Therefore, the rounded weighted based figure is 11.5%

**Step 2 – Adjustment to Base Figure**

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

**1. Consideration of Previous Years' Performance**

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

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