

- Adjustment for past participation is not required if you are developing a DBE program for the first time and do not have any statistics on past DBE participation.

While we may consider making adjustments to the base figure, we are not required to make such an adjustment, as we are developing a DBE Program for FTA0-assisted projects for the first time. Therefore, DDOT DBE Goal for FY 2012 - 2014 is **11.5%**.

### **3. Adjusting the Goal in Consideration of Current Market Dynamics**

#### **DISPARITY STUDY**

The OSDBU's *Tips for Goal Setting in the Disadvantaged Business Enterprise Program's* website, suggest that data should be collected and analyzed to consider the current market dynamics as a means to determine whether or not an adjustment to the goal is necessary. One suggested method is to analyze the results of a disparity study. The DDOT has not conducted a disparity study. Therefore, we do not have sufficient quantitative data to support an adjustment.

#### **PUBLIC PARTICIPATION**

Consistent with the requirements of 49 CFR Part 26, DDOT will aggressively seek input of the business community in the design and implementation of its DBE Program, including receiving comments regarding the effectiveness of its established annual goals and the appropriate methodology for setting its annual overall goal.

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

The DDOT will meet the maximum feasible portion of its overall goal using Race/Gender-Neutral (R/G-N) means. The OSDBU website provides guidance as to how DOT recipients capture data and calculate the race/gender-neutral portion of the overall DBE goal. It states, "If you have instituted new and comprehensive mechanisms aimed at obtaining additional DBE participation through race/gender-neutral means, these efforts might provide the basis for estimating a greater level of race/gender-neutral participation for the upcoming year." Since this is a new DBE program for FTA-assisted programs, the following considerations were explored and analyzed:

- A. Consideration of the Amount by Which DDOT Exceeded Past Years Goals.  
RESPONSE: Since the agency has only one (1) FTA-funded project with a DBE goal in accordance with 49 CFR Part 26, there is not sufficient history to consider this option.
- B. Consider Past Participation by DBE Prime Contractors.  
RESPONSE: Since this is a new FTA DBE program, there is no sufficient data to consider this option.
- C. Consider Past Participation by DBE Subcontractors on Contracts Without Goals.  
RESPONSE: Since this is a new FTA DBE program, there is no sufficient data to support this option.
- D. Consider MBE/WBE/DBE Participation Pursuant to Race/Gender-Neutral State or Local Programs.  
RESPONSE: DDOT does not have sufficient data for consideration.
- E. Consider Concrete Plans to Implement New Race-Neutral Methods.

RESPONSE: DDOT has a newly-approved small business program, in accordance with 49 CFR Part 26. This program, along with our existing DBE Supportive Services Program, these efforts might provide the basis for an estimated 1.5% race/gender-neutral participation for FY 2012-2014. DDOT through its DBE Supportive Services Program will employ the following race/neutral strategies:

1. Distribution of bi-weekly procurement and small business development training opportunities;
2. Networking Events for small businesses to meet prime contractors;
3. Bi-monthly DDOT 101 For small businesses who are interested in doing business with the agency;
4. Small business development workshops such as marketing, bond financing, estimating and other business opportunity workshops.
5. Implementation of a Mentor-protégé program.

DDOT recommends that the Race/Gender-Neutral measures shall be maintained and monitored in accordance to the DDOT Small Business Program.

DDOT believes that the use of both Race/Gender-Neutral and Race/Gender-Conscious measures are necessary in order to achieve fair/equitable contracting and recommends a three year (2012-2014) DBE Goal to be adjusted to **10%** using Race/Gender-Conscious and **1.5%** using Race/Gender-Neutral measures.

As a result, DDOT anticipates meeting the FY 2012-2014 Overall Annual DBE Goal of **11.5%: 10%** Race-Conscious participation and **1.5%** Race-Neutral participation.

### **SMALL BUSINESS CAPACITY BUILDING ACTIVITIES**

The DDOT will continue its efforts to assess its business capacities through on-going outreach and small business development.

### **SURVEYS FOR DBE FIRMS AND PRIME CONTRACTORS**

In FY 2010, The DBE Supportive Services Program developed two surveys: One each for DBE firms and prime contractors. This much-anticipated project was necessary in order for the DDOT to ascertain the needs of the DBE community and to evaluate the persistent barriers to participate in DDOT's highway and road construction projects.

### **DBE SUMMIT**

During FY 2011 and FY 2012, DDOT hosted an annual networking event (DBE Summit) to discuss procurement opportunities and provide networking opportunities with the Agency's prime construction contractors and A/E project managers. Both events attracted over 200 participants from across the Washington Metropolitan region. DDOT has decided to continue to host this event annually. We have listened to the small business community, and they expect to build more partnerships with prime contractors.

## **2012-2014 DBE GOAL COMMUNITY COMMENTS**

DDOT held a public meeting on July 2, 2013 to receive comments specifically about the establishment of its FY 2012-2014 DBE Goal. In accordance with 49 CFR Part 26.45(g)(1) and (2), the meeting notice was published on DDOT's website and in the following publications:

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

The document will be available for public review and comments during our normal business hours. DDOT will also accept comments on the goals for 45 days from the date of the notice.

## **OUTREACH**

DDOT will continue its efforts throughout the Washington Metropolitan Area to recruit DBEs and other small business concerns, focusing on agencies performing similar transportation-related contracting, i.e., the Departments of Transportation for Maryland and Virginia, Washington Airports Authority, and WMATA.

## **NETWORKING**

DDOT will continue to host networking sessions linking prime contractors with subcontractors in an effort to facilitate communications and awareness regarding the capabilities of DBE certified firms and other small business concerns to enhance joint partnership opportunities.

## **SUPPORTIVE SERVICES**

DDOT will continue its initiatives to provide support services to its certified DBEs. DDOT will continue conducting targeted assessments of the capabilities of its certified DBEs, and other small business concerns by identifying and providing technical assistance and training necessary to assist with their growth and development objective. DDOT established a centralized Business Opportunities and Workforce Development Center (BOWDC) where the small business community receives assistance in the area of bond readiness, financial planning, bidding and estimating, etc. Eligible construction-related small businesses will also be able to access the BOWDC during regular business hours to obtain information on bid/subcontracting opportunities, utilize computer terminals to access information regarding procurement opportunities, developing business plans, and accounting and bidding software.

## **DBE NEWSLETTER AND OTHER ON-LINE PUBLICATIONS**

The DBE Supportive Services Program through the BOWDC publishes a quarterly newsletter, The DBE Insider. Although the target audience is the DBE community, the information is applicable to all small businesses regarding information on current DDOT projects, both locally and federally funded procurement opportunities.

## **EXPANSION OF SMALL BUSINESS DEVELOPMENT TECHNICAL ASSISTANCE AND RESOURCES**

### **Partnership with DBE Financial Institutions**

In accordance with 49 CFR Part 26.27, DDOT welcomed the Industrial Bank of Washington (IBW) to the Short Term Lending Program team. IBW is the oldest and largest African American commercial bank in the metropolitan Washington region. IBW has several branches in the District of Columbia and in Prince George's County, Maryland. The DBE/SS Program through its BOWDC will partner with IBW in the new fiscal year on several small business financial education workshops.

### **Webinar: Doing Business with DDOT**

During FY 2012, the Agency embarked on a series of webinars entitled, "Doing Business with DDOT." This webinar series includes: DDOT 101 How to Do Business with DDOT, Contract Basics, How to Write a Winning Proposal and other offerings that will be provided during the remained of FY 2012. It is the Agency's goal to provide recurring webinars that will take into consideration new firms that enter into the Agency's market and also require the course for new and re-evaluated DBE firms. During the outset of the training season, these webinars were targeted towards DBE firms participating in the Business Assistance Program. However, the Office of Civil Rights (OCR) received positive feedback, and therefore, made the courses available to the general small business community.

### **Doing Business with DDOT Annual Business Forum**

In September, 2010, DDOT convened its first "Doing Business with DDOT Annual Business Forum". The BOWDC Coordinator supported the efforts of DDOT's Infrastructure Project Management Administration in providing outreach and recruitment efforts to the general business community. This was DDOT's first official forecasting event that informed the DBE and prime contracting community about future federal-aid contracts for FY 2011. Over 100 firms attended the successful event.

### **Other Supportive Services**

The BOWDC Team continues to support our DBE firms who are currently engaged on DDOT's federal-aid highway construction projects. Throughout the quarter, the team has conducted the following activities:

- Assisted prime contractors' good faith efforts for partnering with DBE firms on federal-aid projects;
- Fielded DBE concerns regarding non-payment and work scheduling matters;
- Supported new DBE firms entering our program and providing information on upcoming business opportunities with DDOT and our partner agencies in the Metropolitan Washington area;
- Assisted over 200 DBE firms with procurement information, capability statement advisement and general information about the DBE program;

- Publishing and Distribution of bi-weekly procurement announcements; and
- Attending outreach events sponsored by our partnering agencies.

### **ON-GOING COMMUNICATION WITH PRIME CONTRACTOR COMMUNITY**

The BOWDC Coordinator published a quarterly electronic newsletter to inform the prime contracting community of the various resources available to increase their DBE subcontractors' financial capacity. The newsletter also informed the prime contractor community of the availability of the BOWDC coordinator and other OCR staff members for consultation prior to the need to substitute a DBE firm on a federal-aid project.

#### **Prime Contractor Survey**

To better determine the needs of the prime contractor community, the DBE/SS team collaborated to develop and distribute the prime contractor survey. Using Survey Monkey, an online survey instrument, the survey period ran for approximately one from March 18, 2011 and April 15, 2011. The goal was to get a snapshot of responses prior to the DBE Summit and Networking Event. Below is an excerpt from the survey.

- The DBE/SS Business Development Consultant advertised the prime contractor survey to a total of 100 prime contractors.
- Twenty-seven (27) responded to the online survey, (a response rate of approximately 30%)
- Approximately **80% of the** respondents indicated that DC **was** their primary place of business. **100%** of the out-of-state respondents indicated primary business operations in **Virginia, Maryland, and/or Pennsylvania.**
- The majority of respondents are **A/E firms:**
- Nearly **56%** of Prime Contractors who responded have received **1-5** DDOT federal-aid contracts. Almost **30%** of the respondents have not received any **(zero).**

#### **Networking Opportunities with the Prime Contractor Community**

During FY 2011-12 the DBE SS team in collaboration with the District Department of Small and Local Business Development (DSLBD), the BOWDC team supported the good faith efforts of our prime construction and engineering community. Notably, individual networking sessions were held for Fort Myer Construction Company and Parsons Brinckerhoff (PB) for DBE firms and other small businesses that were interested in pursuing subcontracting opportunities. FMCC is DDOT's most active federal-aid contractor that has experienced challenges with identifying locating DDOT-certified firms who have the business capacity to perform on the Agency's federal-aid construction projects. PB is also a well-respected engineering firm that conducts business with DDOT on a number of federal aid projects. Both events attracted over 40 firms who were eager to market their services to these respected firms in our community. Additional firms are scheduled for FY 2013.

## **TECHNICAL TRAINING**

### **Road and Highway Construction Safety Certification and Compliance**

Throughout FY 2010-12, the BOWDC sponsored several safety certification courses in collaboration with our trainer/partner The American Road and Transportation Association (ARTBA) the following courses were offered:

- 1) 30-Hour OSHA courses
- 2) 10-Hour OSHA Courses (including rollover/rollback safety)
- 3) Construction Math, Blue Print Reading and Estimating
- 4) Flagger Courses
- 5) First Aid/CPR

The American Road and Transportation Builders Association (ARTBA) conducted a Flagger Training course. In FY 2012 in partnership with ARTBA and the University of the District of Columbia Community College Workforce Development and Lifelong Learning Division (UDC-CC), a 10-hour OSHA training with rollback/rollover safety was offered to all construction-related small businesses in both English and Spanish languages. As of this date, 49 participants attended the courses or received the courses on site at their offices.

During FY 2010-12, the BOWDC in partnership with the District Department of Housing and Community Development and the U.S. Department of Labor Wage & Hour Compliance Division, sponsored annual Davis Bacon Act workshops. This workshop is opened to both primes and subcontractors who are required to submit weekly certified payroll records.

### **Small Business Development Activities**

#### **Low Impact Development (LID) Training for Small Business Firms**

DDOT and the Community College the University of the District of Columbia (CCDC) Workforce Development Center for Lifelong Learning executed a Memorandum of Understanding (MOU) to implement the Low Impact Development (LID) Training for Small Business firms. This is another much need program that will increase opportunities for small landscaping firms.

#### **Financial Capacity Building**

During FY 2010-12 DDOT's DBE Consultants and the 11<sup>th</sup> Street Bridge DBE Project Management Team and the Mid-Atlantic Region Small Business Transportation Resource Center facilitated several Financial Capacity workshops that included construction financing options. The DBE/SS Marketing /Business Development Consultant convened a meeting with the Mid-Atlantic Region Small Business Transportation Resource Center (SBRTC) Program staff and the Short Term Lending Program (STLP) lenders to strategize how to best serve the small business community and build their financial capacity. Following that, we developed plans to team with SBRTC and regional STLP lenders to offer financial information and technical assistance sessions for DBE and other small business firms at the BOWDC.

### **Outreach Activities**

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

1. Exhibitor at the Annual OSDBU Procurement Fair
2. Participated as a panelist during the Congress Heights Community Leadership Development Council with the Office of Contracts and Procurement
3. Exhibitor at the Metropolitan Washington Airports Authority Annual Business Opportunity Day
4. Exhibitor at the U.S. Department of Transportation OSDBU Veterans Event
5. Exhibitor at the U.S. Department of Transportation OSDBU Networking Event

### **University of Maryland Transportation Technology Transfer Center**

The DBE/SS Program partners with the University of Maryland Transportation Technology Transfer Center to offer advanced transportation-related training to DDOT-certified DBE firms. The DBE/SS subsidizes the cost of the training for qualified DBE firms.

### **Partnerships**

The Agency believes the success of the DBE/ SS Program is due to the work and relationship building of the BOWDC staff and the strategic partnerships that it recruits to carry out the mission of this program. Each partner is committed to the development of the small business entrepreneur and to assisting individuals to obtain sustainable employment through the

highway construction trade industry. Each partner has offered their organizational resources in-kind or at reduced costs as their commitment to the Agency and to the program.

### **District Department of Transportation Infrastructure Project Management Administration**

Serve as the BOWDC's fiscal partner as an integral outreach component of the Anacostia Waterfront Initiative.

### **District Department of Employment Services (DOES)**

DOES has agreed to support this effort on a variety of programmatic levels due to its mission to assist businesses in increasing and developing their workforce capacity, encouraging entrepreneurship as an alternative employment strategy and assisting unemployed individuals to gain sustainable employment.

- Project Empowerment and the Senior Empowerment Program provide in-kind services through the recruitment and placement of individuals in the areas of administrative support.

#### **Department of Local, Small and Disadvantaged Business Development (DLSBD)**

As a founding partner, the DLSBD Office partners with the BOWDC to offer free or low cost business development courses designed for small businesses. The office has also offered their training space to host seminars as it is conveniently located in central downtown Washington, D.C.

#### **The Office of Contracting and Procurement**

Provide roundtable discussions on DDOT's procurement forecasting and other vital workshops targeted toward small business development.

#### **Washington Metropolitan Transit Authority (WMATA)**

As a partner in the Unified Certification Program, WMATA provides the DBEs with additional procurement opportunities. WMATA also is a strategic partner on various networking events and procurement conferences.

#### **DC Chapter, National Association of Minority Contractors (NAMC)**

Offers access to members who are DDOT DBE certified and also pledges to co-sponsor events targeted to the organization's membership.

#### **The American Road and Transportation Builders Association (ARTBA)**

Current contractor - provide the advanced safety certifications for our DBE firms.

#### **University of Maryland Transportation Technology Center**

Strategic Partner that provides advanced technical training courses to certified DBE firms.

#### **Ward 8 Business Council**

The Ward 8 Business Council is a strategic community partner with a strong reputation for advocating for and developing small businesses in Ward 8, within the Anacostia Waterfront Development Zone. Partnership provides information for small businesses interested in highway and road construction opportunities. They partner with the DBE/SS to coordinate outreach to increase the number of certified DBEs. Share information on training and networking opportunities.

#### **Washington Area Community Investment Fund**

The Washington Area Community Investment Fund (WACIF) serves the small business community in the District of Columbia. WACIF provides technical assistance as well as micro-loans to the small business community.

**The Washington Network of Small Business Development Centers**

Under the auspices of the Howard University School of Business, this strategic partnership will provide DBEs with SBA-sponsored resources.

**SCORE Business Counselors for Small Businesses**

A resource partner of the SBA, SCORE utilizes a cadre of volunteers of retired business executives who offer free business counseling and access to free or low cost entrepreneurial workshops designed to assist the growth of small businesses.

## ATTACHMENT 9

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

**Section 26.51: Breakout of Estimated  
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.

We estimate that, in meeting our overall goal of **18%**, we will obtain **1.5%** from race-neutral participation and **10%** through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious DBE participation. The estimate was arrived in accordance with 49 CFR Part 26.45, in determining the relative availability of DBE firms within the Washington Metropolitan area, based applicable NAICS Codes. The relative availability was weighted against the percentage of the anticipated dollar amount for the anticipated scope of work. The calculations derived from these two factors resulted in the weighted base figure of 11.5% for the agency's overall triennial goal.

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

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

DDOT uses the following race-neutral means to increase DBE participation:

1. Bi-monthly DDOT 101 For small businesses who are interested in doing business with the agency;
2. Small business development workshops such as marketing, bond financing, estimating and other business opportunity workshops.
3. Other activities included:

### **Procurement Opportunities**

Throughout FY 2010-12, the BOWDC distributed regular bi-weekly procurement workshops and training updates to DBE firms listed in DDOT's and WMATA's directory. Additionally, the DBE Supportive Services Coordinator shared the announcements with DDOT's regional partners in Maryland and Virginia and with other partners that serve the small business community throughout the Metropolitan Washington Region.

### **DBE Summit and Networking Event**

The DDOT OCR, led by the DBE Supportive Services Team, in collaboration with the District Division of the Federal Highway Administration (FHWA), will facilitate and host an annual DBE Summit. Each year, over 200 participants attend the event that features industry-related workshops and networking. Beginning in FY 2013, as a component of the Agency's Race/G-N, small business program, the program will be expanded to include a greater number of construction-related small business firms.

### **Collaboration with the District Department of Small and Local Business Development**

In an effort to expand our DBE directory with certified DBE firms who are ready, willing and able to perform on DDOT's federal-aid highway construction projects, the DDOT OCR elevated its partnership with the District Department of Small and Local Business Development's by participating in its pre-certification information sessions. The DBE Marketing/Business Development Consultant conducts quarterly "DBE for CBEs" information sessions. These sessions provide our local certified businesses information about our DBE program and potential business opportunities. Further, as the agency develops its small business enterprise program, this partnership in addition to our other sister transportation agencies, will be a valuable resource for competitive federal-assisted transportation projects.

### **Partnerships with other Small Business Development Entities**

During FY 2013, the BOWDC staff will engage the Washington, DC Small Business Development (SBDC) Network, Darrell Brown and staff to solidify a partnership to provide support and technical assistance to small business firms. This is not the first time that DDOT and SBDC partnered on business development-related projects. In 2008, the SBDC, along with WMATA, partnered with DDOT to host several procurement workshops, including one that focused on women-owned businesses. Therefore, the BOWDC team looks forward to continuing to work with the SBDC under their new leadership.

**ATTACHMENT 10**

**GOOD FAITH EFFORTS**

## 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.
6. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
7. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
8. 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.

**ATTACHMENT 11**

**OFFICE OF CIVIL RIGHTS  
DBE UTILIZATION FORM**

## OFFICE OF CIVIL RIGHTS

### DBE Utilization Form Instructions

*For more information, please contact the DDOT's Office of Civil Rights.*

**Contract/Bid No:** Enter the Project Number or Solicitation Number

**DBE Goal:** Enter the DBE Goal noted in the Contract/Solicitation documents

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

**Contract Type:** Enter the Contract Type, i.e., Construction, Design, Construction Management, etc.

**Contract Value:** Contract Award Amount

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

**Original or Modified Plan:** Indicate whether this is an original DBE Plan or a request for modification due to change in circumstances or as a result of denial of an original plan.

### DBE PLAN

**Name & Address of DBE:** Enter the DBE Name and Address

**Description of Work to be completed by DBE:** Enter a condensed version of the scope of work to be performed by the DBE. Specify type of work and the percentage of the type of work to be performed by the DBE, i.e., Type: Trucking, Supplies, Material, Labor or a combination thereof. **Please be reminded that if DBE subcontractor's scope is to furnish Supplies/Material without installation cost must be calculated at 60% of the total contract value to be applied towards DBE Goal!**

**Estimated Dollar Value of DBE Participation:** Enter the Estimated Contract Value to be awarded to the DBE for the work to be performed. This Contract Value should appear on the Letter of Intent. If the DBE is a supplier, indicate the amount of expenditures allocated for services separate from supplies.

**% of DBE Participation:** Divide the Contract Value noted on the Letter of Intent by the Contract Value awarded by DDOT to determine the % of DBE participation for each DBE listed.

**Totals:** Enter the total of the "Estimated Dollar Value of DBE Participation" and "% of DBE Participation" columns.

**Print the Contractor Name**

**Print the Authorized Representative Name**

**Signature of the Authorized Representative**

**Date form was signed**

**Attach a copy of the DBE Certification Letter, DBE Quote to the Contractor and the Letter of Intent for all DBE's listed on the DBE Plan.**

For questions or to forward the completed DBE Utilization Form and all required documents for processing, please contact by e-mail: [Mohammed.Kabir@dc.gov](mailto:Mohammed.Kabir@dc.gov). **Mohammed Kabir, PHR/Sr. EO Compliance Officer**

# DBE UTILIZATION FORM

OFFICE OF CIVIL RIGHTS

## DBE UTILIZATION FORM

CONTRACT/BID NO: \_\_\_\_\_ DBE GOAL: \_\_\_\_\_

PROJECT NAME: \_\_\_\_\_ CONTRACT TYPE: \_\_\_\_\_

CONTRACT VALUE: \_\_\_\_\_ DBE GOAL VALUE: \_\_\_\_\_

Please check one:  Original Plan  Modified Plan

I/We, (THE CONTRACTOR) \_\_\_\_\_ hereby submit the following proposed plan for DBE participation, in keeping with requirements set forth in 49 CFR 26.53. I/We understand and agree that the District Department of Transportation's Office of Civil Rights will review the below information and issue a decision as to approval or denial. The Notice to Proceed (NTP) will not be issued until this document and all required attachments have been received and approved by the DDOT Office of Civil Rights!

DBE PLAN			
Name & Address of DBE	Description of Work to be completed by DBE	Estimated Dollar Value of DBE Participation	% of DBE Participation
<b>TOTALS</b>		\$	%

*Failure to comply with these directives may prevent/delay the issuance of the NTP for this project.*

The undersigned hereby further assures that the information included herein is true and correct, and that the DBE firm(s) listed herein have agreed to perform a commercially useful function stated in the work description noted for each firm. The undersigned further understands that no changes to the DBE Plan may be made without prior approval from the DDOT Office of Civil Rights.

\_\_\_\_\_  
Contractor

\_\_\_\_\_  
Print Name of Authorized Representative

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

\_\_\_\_\_  
Signature of Authorized Representative

APPROVED: \_\_\_\_\_  DENIED: \_\_\_\_\_

Mohammed Kabir, PHR/-Sr. EO Compliance Officer

## **Attachment-12**

**AGREEMENT FOR UNIFIED CERTIFICATION PROGRAM  
BETWEEN  
WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY  
AND  
DISTRICT DEPARTMENT OF TRANSPORTATION  
(Revised December 2011)**

**AGREEMENT FOR UNIFIED CERTIFICATION PROGRAM  
BETWEEN  
WASHINGTON METROPOLITAN AREA  
TRANSIT AUTHORITY  
AND  
DISTRICT DEPARTMENT OF TRANSPORTATION**

**(Revised March 2012)**

**PREAMBLE**

THIS AGREEMENT is made and entered into by and between the Washington Metropolitan Area Transit Authority (WMATA), an interstate compact agency which includes the District of Columbia, State of Maryland and Commonwealth of Virginia, as well as, the District Department of Transportation (DDOT), a city agency of the District of Columbia.

WHEREAS, 49 CFR Part 26.81 requires recipients of federal transportation assistance to create a Unified Certification Program as part of its Disadvantaged Business Enterprise Program; and

WHEREAS, each party to this agreement certifies firms as disadvantaged business enterprises, and will continue to do so at their own expense, and are similarly situated as independent and overlapping jurisdictions, thus creating the likeness of a state with subdivisions, desire to combine their resources to perform certifications as a Unified Certification Program, as mandated under 49 CFR Part 26.81; and

NOW, THEREFORE, in consideration of the mutual promises and benefits that each party shall derive here from, the parties agree as set forth hereinafter.

**POLICY**

It will be the policy of the Metropolitan Washington Unified Certification Program (MWUCP) to ensure that only firms certified by the Metropolitan Washington Unified Certification Program, through its participating members (DDOT & WMATA), will be eligible to participate in the Disadvantaged Business Enterprise (DBE) programs operated by the participating members. Also, it will be the policy of the Metropolitan Washington Unified Certification Program to ensure that participating members shall continue to carry out Disadvantaged Business Enterprise programs until all federal funds from the U.S. Department of Transportation financial assistance have been expended. Updates will be provided to the U.S. Department of Transportation by the Metropolitan Washington Unified Certification Program representing significant changes in the unified certification program and the disadvantaged business enterprise programs of participating members, as required.

**DISADVANTAGED BUSINESS ENTERPRISE  
METROPOLITAN WASHINGTON  
UNIFIED CERTIFICATION PROGRAM**

**SECTION 1.0 GENERAL PROVISIONS**

**Section 1.1 Objectives**

The general objective of this Unified Certification Program is to:

- (a) Establish a Unified Certification Program (UCP) which meets the requirements of 49 CFR Part 26.81;
- (b) Establish the form, substance, parameters and purpose of the UCP;
- (c) Follow all DBE certification procedures and standards, as they apply under Part 26;
- (d) Fully cooperate with the oversight, review and monitoring activities of the U.S. Department of Transportation (DOT), the Federal Transit Administration (FTA) and the Federal Highway Administration (FHWA), respectively; and
- (e) Ensure that only firms that fully meet Metropolitan Washington Unified Certification Program (MWUCP) eligibility standards are permitted to participate as DBEs.

**Section 1.2 Name**

The name of the UCP shall be the Metropolitan Washington Unified Certification Program (MWUCP). It shall be comprised of the Washington Metropolitan Area Transit Authority (WMATA) and the District of Columbia Department of Transportation (DDOT).

**Section 1.3 Definitions**

**Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121.103

- (a) Except as otherwise provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:
  - (1) One concern controls or has the power to control the other; or
  - (2) A third party or parties controls or has the power to control both; or
  - (3) An identity of interest between or among parties exists such that affiliation may be found.

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- (b) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, previous relationships and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

**Alaska Native** means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

**Alaska Native Corporation (ANC)** means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.).

**ACDBE** means a firm that has been certified as an Airport Concession Disadvantaged Business Enterprise or ACDBE pursuant to 49 C.F. FR. parts 23 and 26.

**Bidder, Offeror and Proposer** are synonymous and mean any person or entity which seeks to do business with WMATA or DDOT and has submitted or seeks to submit a bid, offer or proposal to secure same.

**Bona Fide Business concern** is a DBE firm providing a service, such as professional, technical, consultant, or managerial services.

**Committee** refers to the Metropolitan Washington Unified Certification Program Committee.

**Confidential Business Information** means financial information obtained from a person and privileged or confidential. This means if disclosure by the government would be likely to harm the competitive position of the person who submitted the information and or detailed information on a company's marketing plans, profits, or costs can qualify as confidential business information. Information may also be withheld if disclosure would be likely to impair the government's ability to obtain similar information in the future.

**Compliance** means that a recipient has correctly implemented the requirements of 49 CFR Part 26.

**Contract** means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this program, contract refers only to federally-funded contracts.

**Contractor** means one who participates on or through a contract or subcontract, at any tier, in any program covered by 49 CFR Part 26.

**DDOT** means the District of Columbia Department of Transportation.

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

**Disadvantaged Business Enterprise or DBE** means a for-profit small business concern (a) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (b) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

**DOT-assisted contract** means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

**DOT/SBA Memorandum of Understanding or MOU**, refers to the agreement signed on November 23, 1999, between the Department of Transportation (DOT) and the Small Business Administration (SBA) streamlining certification procedures for participation in SBA's 8(a) Business Development (8(a) BD) and Small Disadvantaged Business (SDB) programs, and DOT's Disadvantaged Business Enterprise (DBE) program for small and disadvantaged businesses.

**FTA** means the Federal Transit Administration.

**FHWA** means the Federal Highway Administration.

**Good Faith Efforts (GFE)** means efforts to achieve a DBE goal or other requirement of 49 CFR Part 26 which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

**Home State** means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.

**Immediate Family Member** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

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

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

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**MCRP** means Modified Certification Reciprocity Program, the program set forth herein for DBE/ACDBE firms that have Home State Certification. For purposes of this MOU, the UCP granting Home State Certification must be a Party to this MOU.

**MWAA** means Metropolitan Washington Airports Authority.

**MWUCP** means the Metropolitan Washington Unified Certification Program.

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

**Native Hawaiian Organization** means any community service organization serving Native Hawaiians in the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

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

**Participating Members** collectively refers to the entities that make up the Metropolitan Washington Unified Certification Program.

**Part 26** means 49 CFR Part 26.

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

**Primary Industry Classification** means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual – United States, 1997 which is available from the Nations Technical Information Services, 5285 Port Royal Road, Springfield, VA 22161; by calling 1-800-553-6847; or via the Internet at:  
(a) <http://www.ntis.gov/product/naics.htm>; (b) <http://www.naics.com>; or (c) <http://www.census.gov/naics>.

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

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

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**Program** means any undertaking on a recipient's part to use U.S. DOT financial assistance, authorized by the laws to which 49 CFR Part 26 applies.

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

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

**Recipient** is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FHWA, FTA, FRA or MWA .

**Reciprocity** is the mutual exchange of privileges and the recognition by members of a Unified Certification Program of the validity of DBE certification privileges granted by the other participating members WMATA, DDOT, MDOT, MWA, and VADMBE.

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

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

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

**Small Business Concern** means, with respect to firms seeking to participate as DBEs in U.S. DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and the Small Business Administration regulations implementing it (13 CFR 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR 26.65(b).

**Socially and Economically Disadvantaged Individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:

- (a) Any individual about whom the MWUCP finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (b) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (1) "Black Americans" which includes persons having origins in any of the Black racial groups of Africa;
  - (2) "Hispanic Americans" which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

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- (3) “Native Americans” which includes persons who are American Indians, Eskimos, Aleut, or Native Hawaiians;
- (4) “Asian-Pacific Americans” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U. S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (5) “Subcontinent Asian Americans” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- (6) “Women”; and
- (7) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

**State** is a political entity formed and governed under the U.S. constitution and/or a recipient of DOT funds.

**States** as used here includes the District of Columbia.

**Tribally-owned concern** means any concern at least 51 percent owned by an Indian tribe as defined in this section.

**WMATA** means the Washington Metropolitan Area Transit Authority.

**Washington Metropolitan Area Transit Authority Compact** is an agreement, pursuant to Pub. L. No. 89-774, 80 Stat. 1324 (1966), between the District of Columbia, State of Maryland, and Commonwealth of Virginia to create the Washington Metropolitan Area Transit Authority (WMATA).

## SECTION 2.0 - PROGRAM REQUIREMENTS

### Section 2.1 Record Keeping and Reporting

- (a) The MWUCP shall transmit the Uniform Report of DBE Awards or Commitment and Payment to FTA at the required time.
- (b) The MWUCP shall provide data about its DBE program to FTA and FHWA as directed by the DOT operating administrations.
- (c) The MWUCP shall create a bidders list.

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- (1) The purpose of this list is to provide the MWUCP with as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on Federally-assisted contracts for use in helping to set the overall goals.
- (2) (A) The MWUCP members must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on Federally-assisted contracts:
  - (i) Firm name;
  - (ii) Firm address;
  - (iii) Firm's status as a DBE or non-DBE;
  - (iv) Age of the firm; and
  - (v) The annual gross receipts of the firm.

(B) Gross receipts information may be obtained by asking each firm to indicate into what gross receipts bracket they fit (*e.g.*, less than \$500,000; \$500,000–\$1 million; \$1–2 million; \$2–5 million; etc.) rather than requesting an exact figure from the firm.
- (3) The individual member of the MWUCP may acquire the information for its bidders list in a variety of ways. For example, it can collect the data from all bidders, before or after the bid due date. It can conduct a survey that will result in statistically sound estimate of the universe of **DBE** and non-**DBE** contractors and subcontractors who seek to work on its Federally-assisted contracts. The individual member may combine different data collection approaches (*e.g.*, collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).
- (c) MWUCP will provide comprehensive data, which shall include but not limited to its initial certification, about its DBE certification program to each of its member components on a monthly basis.
- (d) Pursuant to 49 CFR Part 26 109, the MWUCP will not release information that may be reasonably construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. This information can be released, upon written consent, to address issues concerning reciprocity and where the MWUCP must transmit the information to DOT in any certification appeal proceeding under section 26.89 in which the disadvantaged status of the individual is in question.
- (e) Notwithstanding any contrary provisions of state or local law, MWUCP will not release personal financial information submitted in response to the Personal Net Worth requirement to a third party (other than U.S. DOT) without the written consent of the submitter or a valid court subpoena.

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- (f) *Record Keeping and Reports.* Participating members shall maintain their own records, recordings, assessments and statistics of DBE performance. The sitting chairperson, or his/her designee, shall be responsible for receiving the data and overseeing its compilation into an annual report and distribution to member agencies. A permanent record keeping site, for purposes of convenience, shall be determined by the members of the MWUCP.
- (g) The MWUCP will maintain and make available to interested persons its directories of certified DBEs in its program. The listing for each firm will include the address, phone number and the types of work the firm has been certified to perform as a DBE. The directory will be updated at least annually and the updated information will be made available to contractors and the public upon request. Websites to access our websites: [www.wmata.com](http://www.wmata.com) or [www.metroopensdoors.com](http://www.metroopensdoors.com) and <http://dbe.ddot.dc.gov>

### **Section 2.2 Home State Certification**

- (a) In accordance with 49 CFR Part 26.81(d), a UCP shall not process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The MWUCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.
- (b) For WMATA the purposes of the MWUCP, "*home state*" consists of the jurisdictions that comprise the Interstate Compact: Prince George's and Montgomery counties in Maryland, the District of Columbia and the Virginia jurisdictions of Alexandria, Falls Church and Fairfax cities and Arlington, Fairfax and Loudoun counties. Further, prospective DBE firms located in the Interstate Compact local area are not required to be certified by another home state as a requirement for becoming certified as a DBE firm by the MWUCP.
- (c) DDOT firms not certified in their home states are not eligible for DBE certification by the MWUCP until such time that the applicant firm's home state certification is obtained and evidenced to the MWUCP.

### **Section 2.3 Program Administration**

- (a) Metropolitan Washington Unified Certification Committee.
  - (1) *Members.* The MWUCP shall be administered by a Metropolitan Washington Unified Certification Program Committee. The total number of Committee Members shall be six (6). Membership on the Committee shall be the DBE Liaison or his/her designee, from each member entity, and two (2) representatives from WMATA and DDOT. The representatives will be appointed by the DBE Liaison from WMATA and DDOT. Vacancies will be filled by the DBE Liaisons.. (NOTE: It is recommended that the number of MWUCP voting members be changed to seven (7) to include representatives from DDOT

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(CIVL), WMATA (PRMT), WMATA SBLPP, Finance PRMT,  
Construction/Engineering Departments.)

- (2) *Chairperson.* The Committee shall be chaired by the DBE Liaison for each member entity on an alternating basis for a period of one calendar year. The calendar year shall begin on January 1<sup>st</sup>. The designated Chairperson may appoint a committee member to serve as the Chairperson for a specific meeting(s) throughout the year, as necessary.
- (3) *Meetings.* The committee shall meet the second Thursday of each month. Meetings shall be held, on an alternating basis, in the offices of the participating members of the committee.
- (4) *Quorum.* A majority of the membership shall be a quorum for doing business. All matters before the committee shall be subjected to a majority vote. In the event of a tie vote, the question shall fail for lack of a majority vote.
- (5) *Amendments.* This Agreement shall only be amended upon the unanimous vote of the committee.

(b) Forms and Documents.

- (1) The members of the MWUCP shall use common forms and documents for the certification of prospective DBE firms. (2) Each form of the MWUCP may bear the name of each participating member. All documents for the external dissemination may bear the address, and telephone numbers of each participating member.

(c) Ad hoc Committees.

An Ad hoc committee may be required by the MWUCP to conduct certain business. This committee shall be established upon the unanimous vote of the Metropolitan Washington Unified Certification Program Committee. This committee will be staffed by an equal number of representatives from each participating member for the MWUCP. The Ad hoc committee shall have a chairperson to guide its affairs and ensure adherence to the appropriate provisions of their establishment and will make all necessary recommendations/reports to the Metropolitan Washington Unified Certification Program Committee.

(d) Over Concentration of DBEs.

- (1) If the MWUCP determines that the 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 this type of work, the MWUCP shall devise appropriate measures to address this over concentration.

- (2) MWUCP either alone or in concert with other recipients, institute additional measures which by example may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designated to assist DBEs in performing work outside of the specific field in which the MWUCP has determined that non-DBEs are unduly burdened. The MWUCP may also consider varying its use of contract goals, to the extent consistent with section 26.51 to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.
- (3) The MWUCP will obtain the approval of FHWA or FTA for the MWUCP's determination of over-concentration and the measures that the MWUCP devises to address it. Once approved, the measures become part of the Plan.

(e) Fostering Small Business Participation.

- (1) The MWUCP DBE program shall develop an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.
- (2) As part of this program element the MWUCP may include, but are not limited to, the following strategies:
  - (A) Establishing a race-neutral small business set-aside for prime contracts under a stated amount ( *e.g.*, \$1 million).
  - (B) In multi-year design-build contracts or other large contracts ( *e.g.*, for "megaprojects") requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.
  - (C) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.
  - (D) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.
  - (E) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

## Section 2.4 Operations

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- (a) *Separation of Function.* Each participating member of the MWUCP shall retain the responsibility for administering and operating its own DBE Program. Each participating member shall be responsible for conducting the certifications filed with the member by prospective DBE firms.
- (b) *Approvals and Denials.* Letters indicating the status and final disposition of applications for certification and re-evaluation will be the province of each member on behalf of the MWUCP.
- (f) *Training.* Each participating member shall bear the expense of providing training to its individual staff. This includes attendance at seminars, conferences and meetings where a fee is assessed upon participants.
- (g) *DBE Directory.* Each participating member shall bear the expense of providing and maintaining its own DBE Directory.

**Section 2.5 Administrative Procedures**

- (a) *Admission of New Members.* New members may be admitted to the MWUCP upon the unanimous consent of the membership. New members must agree to comply with 49 CFR Part 26 and this agreement and must also have a Federally-funded DBE Program, approved by the pertinent DOT administrative agency.
- (b) *Streamline Reciprocity Regional UCPs.* The MWUCP, with unanimous consent, may enter into agreements with other UCPs in order to form one or more regional UCPs.

**Section 2.6 Finance**

Each participating member of the MWUCP shall be responsible for its own financing, staffing and budget without recourse to the MWUCP for expenses of any kind, except that if there is an amendment to these provisions that allows the MWUCP to have a budget, the membership will determine such financial issues as expenses, reimbursements, fees and other considerations.

**Section 2.7 Liability**

Nothing contained in this agreement shall be construed or implied as creating any relationship between the signing parties other than the certification of Disadvantaged Business Enterprises. Each participating member shall indemnify the other, and the MWUCP, from practices committed by the participating member.

**Section 2.8 Confidentiality**

All financial information and other proprietary documentation may be shared among the membership and DOT or the respective FTA or FHWA when conducting a DBE Review. Financial and other proprietary documentation shall not be released to the third party, without the written consent of the firm that submitted the information pursuant to 49 CFR Part 26.109.

## **Section 2.9 Three (3)-year No Change and On-site Review**

DBE firms shall be subject to a No Change Statement and On-site Review by the MWUCP every three (3) years to ensure that it is in compliance with 49 CRF Part 26.

## **Section 2.10 Certification Privilege**

Pursuant to 26.83 (h), once the MWUCP has certified a DBE, it shall remain certified until and unless the MWUCP has removed its certification, in whole or in part, through the procedures of section 26.87. The MWUCP may not require DBEs to reapply for certification or require "recertification" of currently certified firms. However, the MWUCP may conduct a certification review of a certified DBE firm, including a new on-site review, three years from the date of the firm's most recent certification, or sooner if appropriate in light of changed circumstances (*e.g.*, of the kind requiring notice under paragraph 26.83 (i)), a complaint, or other information concerning the firm's eligibility. If the MWUCP has grounds to question the firm's eligibility, it may conduct an on-site review on an unannounced basis, at the firm's offices and jobsites.

## **Section 2.11 Removal of Eligibility or Certification**

The MWUCP may remove the eligibility or certification of a DBE firm, in accordance with the procedures set forth in 49 CFR Part 26, section 87, this Agreement and the affected participating member's program plan. Removal of the eligibility or certification of a DBE firm may occur subject to Section 5.5 of this Agreement.

## **Section 2.12 Return of Applications**

In the event that an incomplete application is received, the participating member shall:

- (a) Not complete an incomplete application for a prospective DBE firm. The participating member shall notify the prospective DBE firm with Instructions to guide the firm in filing a complete application.
- (b) If withdrawal by the applicant is requested at any time by the applicant prior to the recipient beginning the review and evaluation procedure the application will be returned.
- (c) Pursuant to 49 CFR Part 26.73 (c), a participating member may determine that a prospective DBE fails to cooperate with the certification process. In that event the participating member will notify the proposed DBE using contact email or address information provided by the prospective DBE allowing ten (10) business days from receipt of the notice to respond.

- (d) Failure to Cooperate. DBE firms and firms seeking DBE certification shall cooperate fully with recipient's request (and DOT requests) for information relevant to the certification process pursuant to 26.73 (2)(c).

### **Section 2.13 Application Status**

Applications that are incomplete or that do not conform to home state policies are not to be processed and denied certification. Rather, such applications are to be returned to the firms pursuant to the provisions set forth in (d) and (e), above. An applicant may withdraw his/her application at any time prior to certification. For the purposes of reevaluation of an application for DBE certification, an applicant may withdraw his/her request for reevaluation at any time.

- (a) *Application Fees.* Members of the MWUCP shall determine, by unanimous vote, whether prospective DBE firms should be assessed an application fee and shall then determine the amount of the fee. In the event that fees are assessed, banking and other relevant matters must be decided prior to implementation and collection of such fees.
- (b) *Existing Certifications.* The MWUCP shall adopt each existing certification of participating members as though the certifications had been conducted under the provisions set forth herein. Certifications that are not in conformity with Part 26 shall be reevaluated, under the provisions of Part 26, prior to acceptance by MWUCP for its roll and directory.
- (c) *Certification Log.* The MWUCP shall maintain a roll of all certified DBE firms as presented by each member entity. This log shall be periodically provided to each member for purposes of audits and determinations of compliance with certification provisions.
- (d) *Audits.* Reviews shall be performed by the MWUCP of participating members, as necessary, to determine compliance with 49 CFR Part 26 certification standards. MWUCP members shall submit to MWUCP audits and cooperate fully in the matter.
- (e) *Records.* Copies of complete application documents and final disposition reports, including hearings and appeals, shall be maintained in the files of the MWUCP.
- (f) *Hearings and Appeals.* No participating member shall hold any hearings or accept any appeals concerning denial decisions. Such proceedings are within the purview of DOT. This does not include the informal hearing that may be requested in conjunction with the removal of eligibility for certification or removal of certification. Likewise, the MWUCP may not

conduct hearings of appeals of denial of certification of a prospective DBE firm.

#### **Section 2.14 Out-of-State Applications**

Applications that are received from out-of-state that do not conform to the home state policy shall be returned to the firm with instructions to first gain certification within their home state to become eligible for certification by the MWUCP. The Out-of-State applicant shall submit the following:

- (a) A completed MWUCP application form, including the Affidavit of Certification, as set forth in 49 CFR Part 26, Appendix F;
- (b) Personal Net Worth Statement;
- (c) Individual Federal Tax Return for the three (3) latest tax years;
- (d) Firm's Federal Tax Returns for the three (3) latest tax years; and
- (e) A copy of the latest Letter of Certification received by the applicant from its Home State.

### **SECTION 3.0 - MWUCP DBE DIRECTORY**

#### **Section 3.1 - MWUCP DBE Directory (26.31)**

- (a) *Annual Directory Required.* MWUCP will make available an annually revised directory identifying all firms eligible to participate as DBEs in the MWUCP's DBE certification program. These directories will be made available at the following websites; <http://dbe.ddot.dc.gov> and [www.metroopensdoors.com](http://www.metroopensdoors.com) or [www.wmata.com](http://www.wmata.com)
- (b) *Directory Listings.* The listing for each firm shall include its address, contact person, email address, telephone/facsimile, FAX numbers, NAICS Codes, and types of work the firm has been certified to perform as a DBE.
- (a) *Distribution.* MWUCP shall make its directory available to anyone wishing to receive a copy. Interested parties may request the directory by writing, telephoning or visiting: Washington Metropolitan Area Transit Authority, DBE/Contract Compliance Branch, 600 Fifth Street, N.W., Washington, DC 20001, (202) 962-1168 or the District Department of Transportation, Office of Civil Rights, 515 M Street, SE., Washington, D.C. 20009, (202) 671- 0479.

### **SECTION 4.0 - CERTIFICATION STANDARDS**

#### **Section 4.1 - Eligibility and Burdens of Proof (26.61)**

Only bona fide business concerns meeting the definition set forth in Section 1.5 and the criteria and standards set forth in 49 CFR Part 26, Subpart D, shall be eligible for certification as a DBE. To be certified, the following criteria must be met:

- (a) The applicant firm has the burden of demonstrating, by a preponderance of the evidence, that it meets Part 26 requirements concerning group membership or individual disadvantage, business size, ownership and control.
- (b) The MWUCP must rebuttably presume that members of the designated groups identified in §26.67(a) are socially and economically disadvantaged. This means they do have the burden of proving to the MWUCP that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in §26.67(a). Applicants do have the obligation to provide the MWUCP information concerning their economic disadvantage (*See* §26.67).
- (c) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving, by a preponderance of the evidence, that they are socially and economically disadvantaged (26.61(d) See Appendix E of this part).
- (d) The MWUCP in making determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis), shall consider all facts in the record, viewed as a whole.

#### **Section 4.2 Group Membership (26.63)**

- (a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (*See* § 26.61 (c)), the MWUCP has a well founded reason to question the individual's claim of membership in that group, the MWUCP must require the individual to present additional evidence that he or she is a member of the group.
- (2) The MWUCP must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (c) of this section.
- (3) In implementing this section, the MWUCP must take special care to ensure that it does not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate §26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.
- (b) In making such a determination, the MWUCP must consider whether the individual has held himself or herself out to be a member of the group over a long period of time prior to making application for certification and whether the individual is regarded as a

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member of the group by the relevant community. The MWUCP may require the applicant to produce appropriate documentation of group membership.

- (1) If the MWUCP determines that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.
- (2) MWUCP decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.

**Section 4.3 Business Size (26.65)**

- (a) To be eligible for certification by MWUCP as a DBE, the firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. Current SBA business size standards found in 13 CFR Part 121 will be applied by the MWUCP appropriate to the type(s) of work the firm seeks to perform on DOT-assisted contracts.
- (b) Even if the requirements of paragraph (a) of this section are met, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations, (see 13 CFR 121.402) over the firm's previous three years, pursuant to the federal size standard.

**Section 4.4 Presumption of Disadvantage (26.67)**

- (a) Citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are rebuttably presumed to be socially and economically disadvantaged individuals. The MWUCP requires the applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.
- (b) Each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, must submit a signed, notarized statement of personal net worth, with appropriate documentation and must not exceed the \$1.32 million.
  - (1) The firm seeking certification has the burden of demonstrating to the MWUCP, by a preponderance of the evidence, that it meets the requirements of 49 CFR PART 26.61(b) concerning group membership or individual disadvantage, business, ownership and control.
  - (2) Pursuant to 49 CFR Part 26.61(e), the MWUCP will make a determination concerning whether the individual s and firms have met their burden of proof demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on

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an individual basis) by considering all the facts in the record, viewed as a whole.

- (3) DBE firms must cooperate with the MWUCP requests for information relevant to the certification process.
- (c) The following are excluded when determining net worth:
- (1) an individual's ownership interest in the applicant firm;
  - (2) the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).
  - (3) a contingent liability to reduce an applicant owner's net worth;
  - (4) assets held in a vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time with significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

**Section 4.5 Rebuttal of Presumption of Disadvantage (26.67(b))**

- (a) If the statement of personal net worth that is submitted by the owner of an applicant under paragraph 4.5(b) of this section shows that the individual personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. A proceeding under Section 4.5(b) is not required in order to rebut the presumption of economic disadvantage in this case.
- (b) If there is a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged, the MWUCP may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. MWUCP's proceeding, as prescribed by Section 26.87 of 49 CFR Part 26, includes the following procedures:
  - (1) MWUCP has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. MWUCP will require the individual to produce information relevant to the determination of his or her disadvantage.
  - (2) When an individual's presumption of social and economic disadvantaged status has been rebutted, his or her ownership and control of the firm in question shall not be used for purposes of DBE eligibility, unless and until, he or she, makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is determination that the individual personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the

program and cannot regain eligibility by making an individual showing of disadvantage.

#### **Section 4.6 Individual Determinations of Social and Economic Disadvantage (26.67(d))**

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE Certification. The MWUCP must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE Certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to the MWUCP, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. Any individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. Applicants are required to provide sufficient information to permit a thorough determination of individual economic disadvantage pursuant to guidelines the guidance of Appendix E of this Part.

#### **Section 4.7 8(a) and SDB Firms (26.84) and Modified Certification Reciprocity Program (MCRP) Firms**

In lieu of conducting its own certification proceeding, and in accordance with Section 5.1, (d) MWUCP will accept eligible DBE as established under 49 CFR 26.83:

- (a) MWUCP may accept the certification of another DOT recipient for this purpose.
- (b) The MWUCP recognizes that the participating Members are partners in the Modified Certification Reciprocity Program (MCRP) that was enacted at the September 12, 2008, regional summit by Maryland's Governor- Martin O'Malley, Virginia's Governor ThomasKaine, the District of Columbia's Mayor Adrian Fenty, the General Manager of the Washington Metropolitan Area Transit Authority- John B. Catoe, and the Washington Metropolitan Airports Authority, Vice President Stanley Baker to streamline the certification process for local Disadvantaged Business Enterprise(DBE) firms and Airport Concession Disadvantaged Enterprises (ACDBE) wanting to participate in federally funded transportation projects throughout the Washington Metropolitan region.
- (c) Pursuant to the MCRP, any Maryland, Virginia or District of Columbia firm that is certified as a DBE/ACDBE in its Home State by the Maryland Department of Transportation (MDOT), the Commonwealth of Virginia, Department of Minority Business Enterprise (DMBE) and the Metropolitan Washington Airports Authority (MWAA) is able to apply for certification with one of the Participating Member through the streamlines process.

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- (1) Under the MCRP, DBE firms applying for certification that are already certified by one of these entities above will need to submit only the following documents to one of the Participating Members to initiate the certification process: the Uniform Certification Application, a Personal Net Worth statement, individual current federal tax return for latest tax year, firm's current federal tax return for the latest tax year and a copy of the current letter of certification received by the DBE/ACDBE from its Home State and a Certificate of Good Standing from the Maryland State Department of Assessments, and Taxation, where applicable. The Reciprocity Member may request additional information from the applicant, if needed, to complete the certification process.
- (2) Once the applicant has submitted the appropriate information, the Participating Member will request a copy of the On-site Report from the Home State Certifier. The Participating Member will evaluate the documents provided by the applicant along with the onsite report from the Home State Certifier to ensure the following: the firm's applications complete, the disadvantaged owner's of the firm personal net worth(s) does not exceed the \$1.32 million, the firms average gross receipts for the last three years (from the date of the DBE application) does not exceed the SBA size limits not the DBE/ADBDE Program limits nor the DOT size limit, as applicable, and the assigned NAICS codes of the applicants from the Home State Certifier meet the needs of the Participating Member. The reciprocity process will be completed within a minimum of 30 days.
- (3) If the correct documents are present and the applicant meets the standards of the preceding paragraph and no additional information is needed, the DBE Liaison for the Participating Member may certify the firm under the MCRP and add the firm to its directory, pursuant to Section 3.1 MWUCP DBE Directory, of this Agreement. The decisions of the DBE Liaison concerning MCRP Certifications will be reflected in the semi-annual report provided to the MWUCP Committee.
- (4) If the Home State has not conducted an on-site visit of the firm within three years of the submission date of the application, the Participating Member will request the Home State to conduct a new on-site. If the Home State Certifier is unable to conduct the on-site the applicant will be removed from the MCRP and be processed pursuant to Section 4.7 of this Agreement.
  - (A) If, upon review of the Home State On-site Report and the applicant's documents, its Member determines that the applicant does meet the requirements for certification, the Participating Member will consult with the Home State Certifier to: clarify the basis for the Home State's determination of eligibility for certification and clarify the specific goods/services the applicant firm is certified to provide, especially where the assigned NAICS codes may cover broad categories.

(B) If upon consultations with the Home State Certifier, it is determined that the applicant does not meet the requirements for certification, the Participating Member may elect to remove the applicant from the MCRP and be processed pursuant to Section 4.7 of this Agreement or the Participating Member may deny certification. In the case of a denial, the Participating Member will send a copy of the Letter of Denial to the Home States with 30 days of the date of the letter.

(d) Should the denial be appealed to the USDOT, the Participating Member will also send a copy of any final determination made by the US Department of Transportation to the Home State within 30 days of the date of the determination.

#### **Section 4.8 Rules Governing Ownership Determinations (26.69)**

- (a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, the MWUCP must consider all the facts, in the record, viewed as a whole.
- (b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.
  - (1) In the case of a corporation, such individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
  - (2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.
  - (3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.
- (c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- (d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are

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regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if -

- (1) the beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
  - (2) the beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policymaking and daily operational activities of the firm. Assets held in a revocable living trust will be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.
- (e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- (f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:
- (1) The owner's expertise must be:
    - (A) in a specialized field;
    - (B) of outstanding quality;
    - (C) in areas critical to the firm's operations;
    - (D) indispensable to the firm's potential success;
    - (E) specific to the type of work the firm performs; and
    - (F) documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
  - (2) The individual whose expertise is relied upon must have a significant financial investment in the firm.
- (g) MWUCP will always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual-

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- (1) As a result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
  - (2) Through inheritance, or otherwise because of the death of the former owner.
- (h) (1) MWUCP shall presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is-
- (A) involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
  - (B) involved in the same or similar line of business; or
  - (C) engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
- (2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate, by clear and convincing evidence, that-
- (A) the gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
  - (B) the disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.
- (i) MWUCP shall apply the following rules in situations in which marital assets form a basis for ownership of a firm:
- (1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the MWUCP shall deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. MWUCP does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

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- (2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.
- (j) MWUCP may consider the following factors in determining the ownership of a firm. However, the MWUCP shall not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because –
- (1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in Paragraph (h) of this section;
  - (2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
  - (3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, MWUCP shall give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

**Section 4.9 Rules Governing Determinations Concerning Control (26.71).**

- (a) In determining whether socially and economically disadvantaged owners control a firm, the MWUCP shall consider all the facts in the record, viewed as a whole.
- (b) Only an independent business will be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
  - (1) In determining whether a potential DBE is an independent business, the MWUCP shall scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
  - (2) MWUCP shall consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.
  - (3) MWUCP shall examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

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- (4) In considering factors related to the independence of a potential DBE firm, the MWUCP must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.
- (c) A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co signature on documents as provided for in Section 26.69(j) (2).
- (d) The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
  - (1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
  - (2) In a corporation, disadvantaged owners must control the board of directors.
  - (3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.
- (e) Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers and/or directors. Such individuals shall not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- (f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority shall be revocable, and the socially and economically disadvantaged owners shall retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs shall be such that MWUCP can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management and policy.
- (g) The socially and economically disadvantaged owners shall have an overall understanding of, and managerial and technical competence and experience directly

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related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners shall have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management and policymaking. Generally, expertise limited to office management, administration or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

- (h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control the potential DBE firm of that type shall possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, MWUCP shall not deny certification solely on the ground that the person lacks the license or credential. However, MWUCP may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.
- (i)
  - (1) MWUCP may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. MWUCP may determine that a firm is controlled by its socially and disadvantaged owners although that owner's remuneration is lower than that of some other participants in the firm.
  - (2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, MWUCP may consider the difference in the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.
- (j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or week/ends, if the individual controls it all the time it is operating.

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- (k) (1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, MWUCP shall make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as the applicant does in other situations, without regard to whether or not the other persons are immediate family members.
- (2) If MWUCP cannot determine that the socially and economically disadvantaged owners - as distinct from the family as a whole - control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- (l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm shall demonstrate to MWUCP, by clear and convincing evidence, that:
  - (i) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
  - (ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.
- (m) In determining whether the firm is controlled by its socially and economically disadvantaged owners, MWUCP will consider whether the firm owns equipment necessary to perform its work. However, MWUCP shall not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.
- (n) MWUCP shall grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to MWUCP only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. MWUCP will not, in this situation, require that the firm be recertified or submit a new application for certification, but MWUCP shall verify that disadvantaged owner's control of the firm in the additional type of work.

- (o) A business operating under a franchise or license agreement will be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, MWUCP should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.
- (p) In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.
- (q) The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

**Section 4.10 Other Rules Affecting MWUCP DBE Certification (26.73)**

- (a)
  - (1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as a DBE. Except as provided in paragraph (a) (2) of this section, MWUCP may not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.
  - (2) MWUCP may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.
- (b)
  - (1) MWUCP must evaluate the eligibility of a firm on the basis of present circumstances. MWUCP shall not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.
  - (2) The MWUCP must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not

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demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this section, the firm is eligible for certification.

- (c) DBE firms and firms seeking DBE certification shall cooperate fully with MWUCP requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.
- (d) Only firms organized for profit will be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.
- (e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm - even a DBE firm - cannot be an eligible DBE.
  - (1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, MWUCP will certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
  - (2) MWUCP may certify such a subsidiary only if there is cumulative 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals.
- (f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.
- (g) Pursuant to 49 CFR 26.73(g) the MWUCP will not require a DBE firm to be prequalified as a condition for certification provided that it requires all firms that participate in its federal contracts and subcontracts to be prequalified.
- (h) A firm that is owned by an Indian tribe, or Native Hawaiian organization as an entity, rather than by Indians, or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR, Section 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in section 26.71.
- (i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

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- (1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:
- (A) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
  - (B) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and
  - (C) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.
- (2) As a recipient to whom an ANC-related entity applies for certification, the MWUCP does not use the DOT uniform application form (*See Appendix F of this part*). The MWUCP shall must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (1) (A) of this section. The MWUCP shall also obtain sufficient information about the firm to allow it to administer the DBE program (*e.g.*, information that would appear in the DBE Directory).
- (3) If an ANC-related firm does not meet all the conditions of paragraph (1)(A) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

## SECTION 5.0 - CERTIFICATION PROCEDURES

### Section 5.1 Procedures to be Followed in Making Certification Decisions (26.83)

- (a) MWUCP shall ensure that only firms certified as eligible DBEs under section 26.83 participate in this program.
- (b) MWUCP shall determine the eligibility of firms as DBEs consistent with the standards set forth by 49 CFR Part 26.
- (c) MWUCP shall take all the following steps in determining whether a DBE firm meets the prescribed standards:

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- (1) Perform an on-site visit to the offices of the firm; interview the principal officers of the firm and review their resumes and/or work histories. MWUCP shall also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation within the Metropolitan Washington, D.C. area. MWUCP may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
- (2) If the firm is a corporation with stock, MWUCP will analyze the ownership of stock in the firm;
- (3) If the firm is a partnership or limited liability company, MWUCP will analyze the ownership interests in the firm;
- (4) Analyze the bonding and financial capacity of the firm;
- (5) Determine the work history of the firm, including the contracts it has received and work it has completed;
- (6) 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;
- (7) 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;
- (8) Required potential DBEs to complete and submit an appropriate form, unless the potential DBE is an SBA certified firm applying pursuant to the DOT/SBA MOU.
  - (A) MWUCP shall use the application form provided in Appendix F to this part without change or revision. However, MWUCP may provide in our DBE program, with the approval of the concerned operating administration, for supplementing the form by requesting additional information not inconsistent with this part.
  - (B) If an SBA 8(a) firm applies to the MWUCP, the 8(a) firm may submit its SBA application package in lieu of a new DBE application package. The MWUCP shall conduct an on-site review of the firm.
  - (C) The MWUCP shall request additional information from the applicant to ensure that all Part 26 requirements are met and that all information has been updated.
  - (D) MWUCP will make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state or local law