

OFFICE OF CIVIL RIGHTS

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

DBE PROGRAM PLAN 2013

FEDERAL HIGHWAY ADMINISTRATION

AND

FEDERAL TRANSIT ADMINISTRATION

AUGUST 2013

BY: Mohammed Kabir, PHR/Sr. EO Local and Federal Compliance Officer DDOT Office of Civil



Policy Statement

Section 26.1, 26.23 Objectives/Policy Statements

The District Department of Transportation (DDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26. The District Department of Transportation (DDOT) has received federal financial assistance from the U.S. Department of Transportation, and as a condition of receiving this assistance, DDOT has signed an assurance that it will comply with 49 CFR Part 26.

It is the policy of the District Department of Transportation (DDOT) to ensure that DBEs are defined in part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

- To ensure nondiscrimination in the award and administration of DOT - assisted contracts;
- To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in DOT assisted contracts;
- To assist the development of firms that can compete successfully in the market place outside the DBE Program.

Lisa Gregory, Esq., Chief, Office of Civil Rights has been delegated as the DBE Liaison Officer. In that capacity, the Chief Office of Civil Rights is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the District Department of Transportation (DDOT) in its financial assistance agreements with the U.S. Department of Transportation.

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

Terry Bellamy
Director, District Department of Transportation

Date



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

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SUBPART A - General Requirements

Section 26.1 Objectives

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

Section 26.3 Applicability

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

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

Section 26.5 Definitions

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

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

Reporting to DOT: 26.11(b)

We will report DBE participation to DOT as follows:

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

FHWA Recipients- The District Department of Transportation (DDOT) - We will report DBE participation on a quarterly basis, using DOT form 4630. This report is due each June 1 and December 1. The report must include DDOT and sub-recipient expenditures. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

Bidders List: 26.11(c)

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

We will collect this information in the following ways:

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

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

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

Section 26.13 Federal Financial Assistance Agreement

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

Assurance: 26.13(a)

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

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

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

Contract Assurance: 26.13b

The District Department of Transportation (DDOT) will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

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

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

Since The District Department of Transportation (DDOT) has received a grant from FTA: \$250,000 or more in FTA planning capital, and or operating assistance in a federal fiscal year. And for FHWA: The District Department of Transportation (DDOT) authorized by the statute warrants DDOT to continue its application of the program. The District Department of Transportation (DDOT) will continue to carry out this program until all funds from DOT financial assistance have been expended. We will provide to USDOT updates representing significant changes in the program.

Section 26.23 Policy Statement

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

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

DDOT DBE POLICY STATEMENT MAILING LIST

- 1. Legion Design/Campbell Associates, Chartered**
4301 Connecticut Avenue N.W. Suite 240
Washington, D.C. 20008
Attention: Endrea Frazier, Vice President
Architect/Engineers Council, President
Phone: 202/833-4444
Email: endrea.frazier@legiondesign.com
- 2. Transportation Development Foundation**
Metropolitan Washington American Road & Transportation Builders Association (ARTBA)
1219 – 28th Street N.W.
Washington, D.C. 20007
Attention: Hank Webster
Phone: 202/289-4434
E-mail: hwebster@artba.org
- 3. Progressive Transportation Services Administration (PTSA)**
District Department of Transportation (DDOT)
55 M Street S.E. 5th Floor
Washington, D.C. 20003
Attention: Carl Jackson, Director
Phone: 202/671-4617
E-Mail: carl.jackson@dc.gov
- 4. Business Opportunity Workforce Development**
District Department of Transportation
2311 Martin Luther King, Jr. Avenue S.E.
Washington, D.C. 20020
Attention: Linda Fennell, Manager DBE Supportive Services
Phone: 202/645-8620
E-mail: linda.fennell@dc.gov

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

Section 26.25 DBE Liaison Officer (DBELO)

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

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

District Department of Transportation

55 M Street, S.E., 3rd Floor

Washington, DC 20003

(202) 671-2628

Lisa.Gregory@dc.gov

In that capacity, the DBELO is responsible for implementing all aspects of the DBE program and ensuring that DDOT complies with all provisions of 49 CFR Part 26. The DBELO does not have direct, independent access to the agency Director concerning DBE program matters. The DBELO have to make contact with DDOT Chief Performance Officer in order meet with the agency Director. An **organization chart** displaying the DBELO's position in the organization is found in (**Attachment 1**) to this program.

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

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

Other personnel responsible for DBE Program implementation

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

Section 26.27 DBE Financial Institutions

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

MINORITY FINANCIAL INSTITUTIONS

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

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

Section 26.29 Prompt Payment Mechanisms

The District Department of Transportation (DDOT) will include the following clause in each DOT-assisted prime contract:

The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than seven (7) days from the receipt of each payment the prime contractor receives from DDOT. The prime contractor agrees further to return fifty percent 50% of retainage payments to each subcontractor when the sub-contractor has completed 50% of the agreed upon work. Remaining retainage is to be returned to the sub-contractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the

above referenced time frame may occur only for good cause following written approval of DDOT's Office of Contracting and Procurement. This clause applies to both DBE and non-DBE subcontracts.

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

Retainage

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

Option Three allows:

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

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

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

Section 26.31 Directory

The District Department of Transportation (DDOT) maintains a DBE directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE Certified with District Department of Transportation and Washington Metropolitan Area Transit Authority. Our DBE Directory is updated daily. The Directory may be found in **(Attachment 2)** to this program document.

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

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

Luisa Portillo, Equal Opportunity/DBE Program Specialist

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

Glenda Payne, Equal Opportunity/DBE Program Specialist

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

Section 26.33 Overconcentration

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

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

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

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

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

Section 26.35 Business Development Programs

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

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

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

Business Opportunity and Workforce Development Center

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

Section 26.37 Monitoring and Enforcement Mechanisms

The District Department of Transportation (DDOT) will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

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

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

- a. Suspension or debarment proceedings pursuant to 49 CFR, Part 26
 - b. Enforcement action pursuant to 49 FR Part 31
 - c. Prosecution pursuant to 18 USC 1001
3. The District Department of Transportation (DDOT) will also provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by a multi-level process. First, the DBE Compliance Specialist will meet with and educate the project engineer and project management team as to what DBEs are expected to work on each project, what tasks are expected to be completed, and for what sum of money. The DBE compliance specialist will then regularly attend progress meetings and receive bi-weekly reports from the field. The DBE compliance officer will additionally visit the project work site at times which, according to the on-site management team, the DBE firms are expected to be performing. The site visits will be unannounced and will be memorialized by the completion of a site visit report. Reports and

photographs may be made available electronically to all members of the staff of the Office of Civil Rights. Additionally, the Office of Civil Rights will maintain regular communication with the DBE contractor and sub-contractor to inquire about work actually completed, and anticipated to be completed.

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

Prompt Payment

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

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

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

Office of Civil Rights

District Department of Transportation

55 M Street, SE, 3rd floor

Washington, DC 20003

(202) 299-2190

Mohammed.Kabir@dc.gov

49 CFR 26.39 SMALL BUSINESSES

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

Federal Disadvantaged Business Enterprise Small Business Program

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

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

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

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

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

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

(Table 1- SBA General Size Standards)

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

Industry Group	Size Standard
Water, Sewer Line and Related Structures	\$33.5 million
Heavy Highway, Bridge & Civil Engineering	\$33.5 million

Poured Concrete Foundation and Structure Contractors	\$14.0 million
Structural Steel and Precast Concrete Contractors	\$14.0 million
Electrical Contractors & Other Wiring Installation Contractors	\$14.0 million
Painting Contractors	\$14.0 million
Site preparation Contractor (Demolition/Excavation Contractors)	\$14.0 million
Ready-mix Concrete/Asphalt Mixture Manufacturing	500 Employees
Brick, Stone, and Related Construction Material Merchant Wholesalers	100 Employees
Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers	100 Employee
General Freight Trucking, Local (Hauling)	\$25.5 million
Engineering/Architect Services	\$4.5 million
Administrative Management and General Management Consulting Services	\$7.0 million
Landscaping Services	\$7.0 million
<u>Small Business Size Standards matched to NAICS</u>	
Specific size standards for Small Business in procurement solicitations should be cross referenced to the SBA website: (http://sba.gov/category/navigation-structure/contracting-officials/eligibility-size-standards).	

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

- Avoid unnecessary and unjustified bundling of contract requirements;
- Utilize DDOT's fiscal year budgetary planning to develop small business utilization for upcoming contracting opportunities;
- Establish a team to diligently facilitate contracting opportunities, awareness and recognition of the critical role that small businesses play in advancing DDOT's procurement activities;

- Train all DBE program employees to be an integral part of DDOT's procurement practices, acting in partnership to develop strategies for increased use of small business firms in support of DDOT's mission;
- Foster through the team, an environment that encourages commitment, the use of integrated systems, professional management tools, and pursue innovative solutions in support of small business concerns;
- Identify small business opportunities within the established threshold on a contract-by-contract basis on USDOT assisted construction contracts and on non-construction procurements (i.e. contracts for services, supplies, and equipment) having a total value not to exceed \$1,000,000). The threshold may be satisfied by utilizing one or more small business concerns as primes or subcontractors or suppliers of goods and services, provided the small business performs a minimum of 51% of the tasks pursuant to the awarded contract. Threshold utilization will be used only when three or more self-certified small businesses are classified by the NAICS code for the required contract solicitation. However, DDOT will not use small business participation when a DBE goal is considered to be in the best interest of DDOT to satisfy the contract solicitation requirement. DBE goals and small business threshold will not be used for contract solicitations simultaneously;
- Coordinate with Program Managers and or COTR to monitor payments to prime small business contractors by (a) reviewing letters of intent and subcontractor schedules of participation to assess the tasks awarded and dollar value involved; (b) maintain a reconciled running tally of payments for the duration of the work to be performed by subcontractors; (c) require prime small business contractors to submit notification of payments of their subcontractors on a monthly basis or as is appropriate considering the type of work being performed or the relevant length of the contract in question. In any event, the notification shall be made to DDOT's Office of Procurement – DBE Liaison at the time of the actual payment by the prime small business concern to the subcontractors; (d) require all subcontractors to provide notification, to DDOT's Office of Procurement - DDOT's DBE Liaison, of receipt of payment from the prime small business concern contractors at the time that payment is actually received; (e) review the prime small business contractors' payment documents and subcontractor receipt of payment documents; (f) verify payment and receipt of payment as required and (g) credit small business concern participation toward the contract threshold only when payments are actually made to small businesses.
- Develop an electronic system that will enable appropriate monitoring and reporting;
- Report to USDOT- FHWA small business participation including payments actually made to small businesses on USDOT assisted contracts, when required;
- Provide training to all DDOT officers, managers and supervisors to fully cooperate with the Office of Procurement-DBE Liaison in the implementation of the Program. All individuals shall be held accountable for their performance in this area. Representatives from the DDOT's DBE team, Office of the General Council, Office of Finance and the Department of Engineering will be included in the process for potential contracting opportunities;
- DDOT will implement extensive outreach activities and develop new partnerships to provide technical assistance and financial institutions such as: The Industrial Bank of Washington, the

National Community Reinvestment Coalition and the U.S. Small Business - Small Business Resource Centers;

- Make available an updated on-line directory identifying all firms eligible to participate as small business concerns in the Program. The listing for each small business concern shall include its company name, address, contact person, email address, telephone/facsimile and NAICS Codes describing types of work the firm has been certified to perform. These directories will be made available at the following website: <http://ddot.dc.gov/dbe>.
- DDOT will ensure that implementation; monitoring and enforcement mechanisms are in place to verify that the work committed to small business concerns at contract award is actually performed by small businesses. All prime small business contractors shall submit monthly progress reports on small business utilization to the DDOT's Office of Procurement- DBE Liaison on a form provided by the Office of Procurement and Materials for this purpose. Enforcement measures may include rescission of contract awards (in whole or in part), administrative fines, debarment from bidders' lists, suspensions from awards, sanctions, referral to appropriate federal authorities in instances of suspected fraud, misrepresentation, misappropriation of funds, theft of services and other activities that warrant criminal referrals or other action; and other appropriate administrative actions.
- On contracts that do not include DBE contract goals, small business firms will be utilized in contracting opportunities as prime contractors who will also provide subcontracting opportunities to another small business firm that meet the designated size standard requirements and can reasonably perform, rather than self- perform all the work involved.
- Identify alternative acquisition strategies and structure procurements to facilitate the ability of consortia or joint ventures by consisting small businesses, including DBEs, to compete for and perform as prime contracts.
- The Program will work to combine and consolidate with DDOT's currently established Small Business & Local Preference Program.

SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

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

Section 26.45 Overall Goals

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

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

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

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

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

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

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

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

Section 26.47

The District Department of Transportation (DDOT) understands that failure to meet the overall goal is not grounds for penalty if the DBE program was administered in good faith.

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

- (1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

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

If DDOT's Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FHWA/FTA demonstrates that current trends make it unlikely that the agency will achieve DBE awards and commitments that would be necessary to allow DDOT to meet its overall goal at the end of the fiscal year, FHWA, FTA, as applicable, may require DDOT to make further good faith efforts, such as by modifying the race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year. **(Attachment 6)**

Section 26.49 Transit Vehicle Manufacturers Goals

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

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

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

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

The District Department of Transportation (DDOT) estimates that, in meeting an overall goal of **18%**, the agency will obtain **1.5%** from race-neutral participation and **10%** through race-conscious measures.

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

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

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

Section 26.51(d-g) Contract Goals

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

The District Department of Transportation (DDOT) will establish contract goals only on those USDOT-assisted contracts that have subcontracting possibilities. We need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

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

Section 26.53 Good Faith Efforts Procedures

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

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

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

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

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

- Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

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

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

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

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

Robert Ballard, Chief Procurement Officer
District Department of Transportation

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

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

Information to be submitted (26.53(b))

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

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

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

Administrative reconsideration (26.53(d))

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

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

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with The District Department of Transportation (DDOT)'s reconsideration official to discuss the issue of whether it met

the goal or made adequate good faith efforts to do. The District Department of Transportation (DDOT) will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the U.S. Department of Transportation.

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

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

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

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

Sample Bid Specification:

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

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

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

Section 26.55 Counting DBE Participation

The District Department of Transportation (DDOT) will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55.

DBE Approval

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

DBE Participation

DBE participation is credited using the following procedures. For construction contracts, refer also to the current The District Department of Transportation (DDOT) Standard Specifications.

- 1) Only the work actually performed by a DBE will be counted towards DBE attainments (49 CFR§ 26.55). All work performed by a certified DBE firm will be counted as long as the DBE performs a Commercially Useful Function (CUF). The cost of supplies and materials obtained by the DBE or equipment leased (except from prime contractor or its affiliate), and used directly in the performance of the work (not overhead) will also be counted.
- 2) Work that a DBE prime subcontracts to a non-DBE firm, does not count towards the DBE goal.
- 3) If materials or supplies are obtained from a DBE manufacturer, one hundred percent (100%) of the cost will be counted. If the materials and supplies are purchased from a DBE regular dealer, sixty percent (60%) of the cost will be counted. If services are brokered or materials or supplies are purchased from a broker, only the brokerage fee will be credited.
- 4) The entire amount of fees or commissions charged by a DBE for providing a service such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of the contract will be counted towards the DBE goal, provided the fee is consistent with fees for that industry and geographical area.
- 5) Equipment rental firms: equipment that is owned leased or rented and operated by the DBE's employees or another DBE qualifies for 100% credit.
- 6) Prime/DBE Joint Venture: The contractor may count toward its DBE goal only that portion of the work that the DBE firm actually performs with its own forces. Should the joint venture be comprised of DBEs only, the entire contract award amount shall be counted toward meeting the DBE assigned goal on the project.
- 7) DBE credit towards an overall goal shall be counted, but shall not be attainment until the DBE actually receives payment from the prime. Documentation must be maintained (as part of the

contract records) showing the participation by and payments to all DBEs on all contracts. Additionally, DBE participation that is attained and paid for after the certification of the DBE has been removed or expired during the performance of a contract shall not be included.

DBE Contract Compliance Process Guide

The purpose of this Guide is to document: **(Attachment 12)**

- Guidance on the regulations as to when, where and by who the program will be administered;
- The procedures and criteria for evaluating contractor and consultant commitments to DBE goals;
- The procedures to ensure contract level DBE utilization and compliance.

Commercially Useful Function (CUF) Reviews

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

- The contractor is responsible for ensuring that DBEs working on the project perform a commercially useful function (CUF). The contractor shall receive credit toward meeting the assigned DBE goal and payment for DBE commercially useful function performed work only.
- 49 CFR §26.55 defines commercial useful function as "A DBE is considered to perform a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved."
- The CUF review/audit will be performed by DDOT or its designee. CUF reviews will be performed on a routine basis and: whenever there is any indication that a DBE may not be performing a CUF; whenever a DBE performs work which varies from the bid items indicated in the contractor's commitment forms; whenever a change in the performance of the DBE occurs; whenever a substitution of work or a change order occurs which affects the work to be accomplished by a DBE and, whenever a replacement or substitution of a DBE occurs. APPENDIX further details the CUF review process and forms.
- When a DBE is initially determined not to be performing a CUF as defined above, the DBE may present evidence to rebut this determination. DDOT OCR will determine if firm is performing a CUF given the type of work involved and normal industry practices. Decisions on CUF matters are subject to review by the concerned operating administration () but are not appealable to USDOT.

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

DBE Management

The DBE majority owner(s) must manage the work contracted. The management shall include scheduling work operations, ordering equipment and materials (if materials are part of the contract), preparing and submitting payrolls and all other required reports and forms, and hiring and firing employees, including supervisory employees.

Daily work operations must be under the direct supervision of the DBE majority owner(s) or a job site supervisor (on a full-time basis) who is the employee and under the direct control of the DBE majority owner(s) only. If the non-socially and economically disadvantaged owners of the firm are disproportionately responsible for the operation of the firm, then the firm is not controlled by socially and economically disadvantaged person, shall not be considered a DBE, and constitutes a failure to perform a CUF.

The supervision of the work by personnel normally employed by another contractor or by personnel not under the control of the DBE constitutes a failure to perform a CUF.

DBE Workforce

The DBE must solicit, hire, place on its payroll, direct, and control all workers performing work under its contract. The DBE owner or its job site supervisor must, on a full-time basis, supervise and control the work of the contract.

The DBE may, with the prior written consent of DDOT OCR or the project manager with prior written notification to DDOT OCR, augment its work force with personnel of another firm. The project manager shall approve the request only when:

- (1) Specialized skills are required, and
- (2) The use of such personnel is for a limited time period.

DBE Equipment

The DBE is expected to perform the work with its own operators and with equipment that is owned, being purchased, leased or rented by the DBE under a written agreement that has been consented to by DDOT OCR prior to the DBE starting work.

No credit will be given for the cost of equipment leased or rented and used in the DBE firm's work when payment for those costs is made by a deduction from the prime contractor's payment(s) to the DBE firm.

4) Equipment Leased From the Prime Contractor

The DBE may lease equipment from the prime contractor provided a written rental agreement, separate from the subcontract specifying the terms of the lease arrangement, is consented to by DDOT OCR prior to the DBE starting work.

The DBE must hire, direct, supervise, control and carry the operator of the equipment on its payroll. The cost of leasing or renting from the prime contractor shall only be approved if it is at the accepted or going industry rates and approved by DDOT OCR prior to starting work.

Specialized equipment and operator leased from the prime contractor is appropriate when a written rental agreement is provided separate from the subcontract specifying the terms of the lease arrangement, and is consented to by DDOT OCR prior to the DBE starting work.

DDOT OCR shall consent to the lease agreement only when:

- the equipment is of a specialized nature,
- the equipment is readily available at the job site,
- the operation of the equipment is under the full control of the DBE,
- the lease arrangement is for a short term, and
- the lease arrangement is a normal industry practice.

According to 49 CFR 26.55, a DBE is considered performing a Commercially Useful Function when:

The DBE is responsible for the execution of a distinct element of work on a contract and carries out its responsibilities by actually **performing, managing, and supervising** the work involved in accordance with normal industry practice. Regardless of whether an arrangement between the Contractor and the DBE represent standard industry practice, if the arrangement erodes the ownership, control or independence of the DBE or in any other way does not meet the commercially useful function requirement, the Contractor shall receive no credit toward the goal(s) and may be required to backfill the participation. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction or contract through which funds are passed in order to obtain the appearance of DBE participation.

The DBE shall employ a **work force**, (including administrative and clerical) separate and apart from that employed by the Contractor, other Subcontractors on the contract, or their affiliates. This does not preclude the employment by the DBE of an individual that has been previously employed by another firm involved in the contract, provided that the individual was independently recruited by the DBE in accordance with customary industry practice. The routine transfer of work crews from another employer to the DBE shall not be allowed.

All work performed by the DBE must be controlled and **supervised** by the DBE without duplication of supervisory personnel from the Contractor, other Subcontractors on the contract, or their affiliates. This does not preclude routine communication between the supervisory personnel of the D/M/WBE and other supervisors necessary to coordinate the contract work.

DBE Subcontractors may **supplement their equipment** by renting or leasing additional equipment in accordance with customary industry practice. Required documentation shall be maintained to support supplemental equipment agreements. The documentation shall include, but not be limited to, copies of the rental or leasing agreements, and the names, addresses, and terms of equipment.

A regular dealer is defined in 49 CFR Subtitle A as: —a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business.

- A. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question.
- B. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.
- C. Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

The Contractor may count the entire expenditure to DBE firms for fees or commissions charged by an approved DBE firm providing a bona fide service. This service includes professional, technical, consultant or managerial services and assistance in procuring essential personnel, facilities, equipment, materials or supplies required for completing the Contract. The Department determines the fee or commission to be reasonable and not excessive as compared to similar services.

The Contractor may count the entire premium for Performance and Payment Bonds and product-related insurance purchased from a DBE agency. The Contractor may count the entire amount of expenditures to regular DBE dealers for rental of equipment. The Contractor may count the entire expenditures to DBE firms when a DBE subcontracts part of the work of its contract to another firm, only if the firm is a DBE. The value of the subcontracted work can only be counted if the DBE subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goal.

Trucking Participation

DBE subcontractors may issue second tier subcontracts (e.g., Truckers) only to DBE contractors if the work is to be counted toward the DBE goal. The Contractor may count expenditures to DBE firms that have contracted to perform trucking operations. To receive credit for this, the DBE firm must perform a Commercially Useful Function.

The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.

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

- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE lessees not to exceed the value of transportation services

provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from its prime contractor or from DDOT's Office of Civil Rights.

- A lease must indicate that the DBE has priority use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck.
- Leased trucks must display the name and identification number of the DBE Subcontractor on the outside of the truck.
- DBE credit for furnishing, hauling and placing stone (actual product) may only be allowed if the DBE purchases the stone, hauls the stone, and places the stone using a spreader owned by the DBE and operated by personnel on the DBE Subcontractor's payroll. Individuals seeking to participate in the DBE Program must comply with the regulations in accordance with 49 CFR Part 26.

Adding DBEs to the DBE Utilization Plan

In the event that the contractor desires to add a DBE to a project, the contractor must complete and submit the DDOT DBE Utilization form. The proposed modified DBE Utilization form shall be reviewed and approved/denied keeping with requirements set forth in 49 CFR 26.53.

Please contact the Office of Civil Rights for any of the following:

- If a DBE firm requires additional technical assistance in order to complete satisfactory performance on this project.
- Change Orders that affect the contract amount affects the DBE Goal. Please contact OCR if there are any change orders processed for this contract.
- If need arises that a joint check arrangement may be executed. You are required to contact OCR **prior** to execution of any joint check arrangement. A joint check arrangement must be approved by OCR!

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

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

Office of Civil Rights

District Department of Transportation

55 M Street, SE, 3rd floor

Washington, DC 20003

(202) 299-2190 Mohammed.Kabir@dc.gov

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 - 26.73 Certification Process

The District Department of Transportation (DDOT) will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be

certified as a DBE, a firm must meet all certification eligibility standards. We will make our certification decisions based on the facts as a whole. **(Attachment 9)**

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

Mrs. Glenda Payne, Equal Opportunity, Certification Specialist

District Department of Transportation
55 M Street S.E. Third (3rd) Floor
Washington, DC 20003
202-671-0479 glenda.payne@dc.gov

Luisa Portillo, Equal Opportunity, Certification Specialist

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

Our certification application forms and documentation requirements are found in **Attachment 9** to this program.

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

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

The rules that govern The District Department of Transportation (DDOT)'s MWUCP are in **(Attachment 11)** the MWUCP follows all certification procedures; cooperates fully with oversight review and monitoring activities of the UCP. The UCP also implements USDOT directives and guidance, and includes an implementation schedule to ensure the MWUCP is fully operational.

Section 26.83 Procedures for Certification Decisions

Re-certifications 26.83(a) & (c)

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

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

- (1) An on-site visit to the offices of the firm.
- (2) If the firm is a corporation, analyze the ownership of stock in the firm;

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

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

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

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

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

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

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

Section 26.85 Denials of Initial Requests for Certification

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

Section 26.87 Removal of a DBE's Eligibility

In the event we propose to remove a DBE's certification, we will follow procedures consistent with 26.87. Attachment 9 to this program sets forth these procedures in detail. To ensure separation of functions in a de-certification, we have determined that a decertification panel comprised of DDOT and WMATA personnel who are knowledgeable of the regulations will conduct an informal hearing and serve as the decision-maker in de-certification proceedings. We have established an administrative "firewall" to ensure that the certification panel will not have participated in any way in the de-certification proceeding against the firm (including in the decision to initiate such a proceeding). **(Attachment 10)**

Section 26.89 Certification Appeals

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

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

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

SUBPART F - COMPLIANCE AND ENFORCEMENT

Section 26.109 Information, Confidentiality, Cooperation

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

FREEDOM OF INFORMATION ACT REQUESTS

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

A FOIA request may be made for any public record. This does not mean, however, that the public body will disclose every record sought. Statutory exemptions authorize the withholding of certain public

records. When the public body does withhold records or portions of records, it must specify which exemption of the FOIA permits the withholding. FOIA does not require agencies to do research, to analyze data, to answer written questions, or to create records in order to respond to a request. FOIA only requires the agency to make a reasonable effort to locate already existing records.

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

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

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

FOIA Officer

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

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

Monitoring Payments to DBEs

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

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

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

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

Office of Civil Rights
District Department of Transportation
55 M Street, SE, 3rd floor
Washington, DC 20003
(202) 299-2190 Mohammed.Kabir@dc.gov

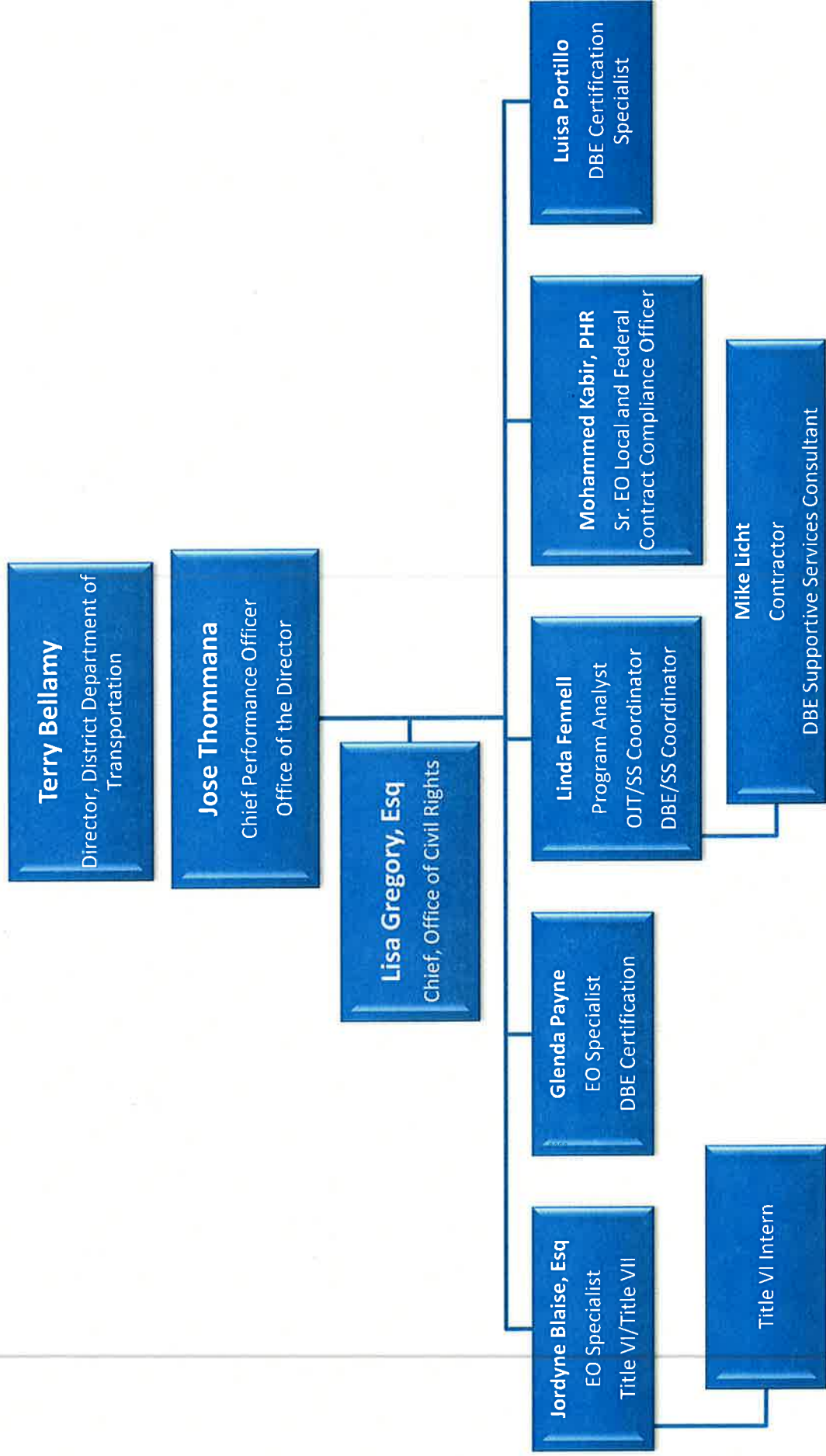
ATTACHMENTS

ATTACHMENT

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

Attachment 1
Organizational Chart

District Department of Transportation Office of Civil Rights Organizational Chart



Attachment 2

DBE Directory

DDOT DBE DIRECTORY

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

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

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

Luisa Portillo, Equal Opportunity/DBE Program Specialist

DDOT Office of Civil Rights

55 M Street, S.E., 3rd Floor

Washington, D.C. 20003

(202) 671-0630

Luisa.Portillo@dc.gov

Glenda Payne, Equal Opportunity/DBE Program Specialist

DDOT Office of Civil Rights

55 M Street, S.E., 3rd Floor

Washington, D.C. 20003

(202) 671-0479

Glenda.Payne@dc.gov

Attachment 3
MINORITY FINANCIAL INSTITUTIONS

MINORITY FINANCIAL INSTITUTIONS

Independence Federal Savings Bank
1301 9th Street, N.W.
Washington, D.C. 20001
1-888-922-6537
www.ifsb.com

Industrial Bank
4812 Georgia Avenue, N.W.
Washington, D.C. 20011
(202) 722-2000
www.industrial-bank.com

The Harbor Bank
25 W. Fayette Street
Baltimore, Maryland 21201
(410) 528-1801
www.theharborbank.com

Advance Bank
4801 Seton Drive
Baltimore, MD 21215
(410) 358-1700
www.advancebanksus.com

Attachment 4

Monitoring and Enforcement Mechanisms

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. 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
TOTALS		\$	%

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

DBE Contractor Payment Form Instructions

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

Contractor: Name of Contractor

Contract Value: Contract Award Amount

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

Contract No: Enter the Project/Contract Number

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

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

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

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

PAYMENT LOG

Name of DBE: Enter the DBE Name

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

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

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

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

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

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

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

Appendix B: DBE Contractor Payment Form

DDOT DBE Contractor Payment Form

OFFICE OF CIVIL RIGHTS

DBE Contractor Payment Form

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

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

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

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

REPORT PREPARED BY: _____

DATE: _____

Print Name of Authorized Representative

Signature of Authorized Representative

OFFICE OF CIVIL RIGHTS

