

COTA



DISADVANTAGE BUSINESS ENTERPRISE PROGRAM

CENTRAL OHIO TRANSIT AUTHORITY

Updated 1 February 2024

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Disadvantaged Business Enterprise Program

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DISADVANTAGED BUSINESS ENTERPRISE POLICY STATEMENT

The Central Ohio Transit Authority (COTA), a recipient of federal financial assistance from the Federal Transit Authority (FTA), has established a Disadvantaged Business Enterprise (DBE) in accordance with regulations of the U.S. Department of Transportation (US DOT), 49 CFR Part 26. As condition of receiving FTA funding, COTA signed an assurance agreement that it will comply with 49 CFR Part 26.

It is the policy of COTA to ensure that DBEs defined in Part 26.1 and 23 have an equal opportunity to receive and participate in US DOT-assisted contracts. It is also our policy:

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

COTA's Chief Diversity Officer has been delegated as the DBE Liaison Officer and in that capacity is responsible for implementing all aspects of the program. While the DBE Liaison Officer reports directly to the Deputy Chief Executive Officer, he/she has direct, independent access to the Chief Executive Officer on all matters concerning the DBE program. The requirements of the DBE program are accorded the same priority as compliance with all other legal obligations incurred by the Authority in its financial assistance agreements.

It is hereby directed that this DBE Policy Statement be posted for all COTA employees to read and be disseminated to all DBE and non-DBE business communities that perform work for COTA on US DOT-assisted contracts. This policy statement will be distributed electronically (i.e. COTA webpage) and included in all US DOT-assisted bid opportunities.



Monica Jones, Chief Diversity Officer/DBELO



Joanna M. Pinkerton, President/CEO

2/05/24
Date

SUBPART A – GENERAL

§ 26.1 – Objectives

The objectives of the DBE Program are indicated in 49 CFR 26 – Section 26.1 and have been incorporated into the Authority’s Policy Statement, which is included herein and are as follows:

- a. To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- b. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- c. To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- d. To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- e. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- f. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
- g. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- h. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§ 26.3 – Applicability

COTA 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, III, and V of the TEA–21, Pub. L. 105–178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA–LU), Pub. L. 109–59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP–21), Pub. L. 112–141, 126 Stat. 405.

§ 26.5 – Terms and Definitions

The definition of terms is essential in understanding the elements of an effective disadvantaged business program. At the same time, it is apparent that no set of definitions, however drafted, can cover all of the potential questions that will arise during the execution of the program. The definitions will be interpreted to achieve the objectives of utilizing disadvantaged business enterprises to the maximum practicable extent. The following definitions serve to aid COTA in interpreting the various elements so the objectives will be achieved.

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, [13 CFR part 121](#).

- 1) Except as otherwise provided in [13 CFR part 121](#), concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or

(ii) A third party or parties controls or has the power to control both; or

(iii) An identity of interest between or among parties exists such that affiliation may be found.

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

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the 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.*).

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

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

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

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

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

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

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

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

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

1. That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.

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

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

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

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

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

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

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

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

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

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

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

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

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

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

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

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

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

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

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

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

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

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

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by- case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

- (i) “Black Americans,” which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) “Hispanic Americans,” which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) “Native Americans,” which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - (iv) “Asian-Pacific Americans,” which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) “Subcontinent Asian Americans,” which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- (3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

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

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that recipients must do XYZ).

§ 26.7 What discriminatory actions are forbidden?

- a. You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.
- b. In administering your DBE program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or

substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

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

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

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

§ 26.11 What records do recipients keep and report?

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

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

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

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

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

(i) Firm name;

(ii) Firm address;

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

(iv) Age of the firm; and

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

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

(d) You must maintain records documenting a firm's compliance with the requirements of this part. At a minimum, you must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.

(e) The State department of transportation in each UCP established pursuant to § 26.81 of this part must report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

- (1) Women;
- (2) Socially and economically disadvantaged individuals (other than women); and
- (3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

§ 26.13 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

- (1) Withholding monthly progress payments;
- (2) Assessing sanctions;
- (3) Liquidated damages; and/or
- (4) Disqualifying the contractor from future bidding as non-responsible.

§ 26.15 How can recipients apply for exemptions or waivers?

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may

administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in § 26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

§ 26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA primary recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts the cumulative total value of which exceeds \$250,000 in FAA funds in a Federal fiscal year.

(b)

(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 79 FR 59593, Oct. 2, 2014]

§ 26.23 What is the requirement for a policy statement?

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

§ 26.25 What is the requirement for a liaison officer?

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

§ 26.27 What efforts must recipients make concerning DBE financial institutions?

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

§ 26.29 What prompt payment mechanisms must recipients have?

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

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

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

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

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

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

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

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

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

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

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

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

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

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

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

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

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

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

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

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

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

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

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

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

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

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

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

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

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

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

§ 26.39 Fostering small business participation.

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

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

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

(2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

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

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

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

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

Subpart C—Goals, Good Faith Efforts, and Counting

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

- (a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.
- (b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.
- (c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

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

- (a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.
- (b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

§ 26.45 How do recipients set overall goals?

- (a)
 - (1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.
 - (2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in § 26.1.
- (b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.
- (c) Step 1. You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

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

(2) Use a bidders list. Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, you must establish a mechanism (documented in your goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on your DOT-assisted contracts.

(3) Use data from a disparity study. Use a percentage figure derived from data in a valid, applicable disparity study.

(4) Use the goal of another DOT recipient. If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) Alternative methods. Except as otherwise provided in this paragraph, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market. The exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section, is not an acceptable alternative means of determining the availability of DBEs.

(d) Step 2. Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

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

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

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

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

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

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

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

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

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

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

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

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f)

(1)

(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.

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

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

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

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

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

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

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the operating administration will be guided by goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.

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

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

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

(6) Timely submission and operating administration approval of your overall goal is a condition of eligibility for DOT financial assistance.

(7) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive DOT financial assistance.

(g)

(1) In establishing an overall goal, you must provide for consultation and publication. This includes:

(i) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-

disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.

(ii) A published notice announcing your proposed overall goal before submission to the operating administration on August 1st. The notice must be posted on your official Internet Web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your official Internet Web site.

(2) At your discretion, you may inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at your principal office and for a 30-day comment period. Notice of the comment period must include addresses to which comments may be sent. The public comment period will not extend the August 1st deadline set in paragraph (f) of this section.

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

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003; 75 FR 5536, Feb. 3, 2010; 76 FR 5097, Jan. 28, 2011; 79 FR 59593, Oct. 2, 2014]

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

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

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

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

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

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)

(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the

appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

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

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

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

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

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

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

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

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

§ 26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.

(2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout 49 CFR part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.

(3) FTA recipient's failure to comply with the requirements set forth in paragraph (a) of this section may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).

(4) FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal.

(1) In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will bid on during the fiscal year in question, less the portion(s) attributable to the manufacturing process performed entirely by the transit vehicle manufacturer's own forces.

(i) You must consider and include in your base figure all domestic contracting opportunities made available to non-DBE firms; and

(ii) You must exclude from this base figure funds attributable to work performed outside the United States and its territories, possessions, and commonwealths.

(iii) In establishing an overall goal, the transit vehicle manufacturer must provide for public participation. This includes consultation with interested parties consistent with § 26.45(g).

(2) The requirements of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) Transit vehicle manufacturers awarded must comply with the reporting requirements of § 26.11 of this part including the requirement to submit the Uniform Report of Awards or Commitments and Payments, in order to remain eligible to bid on FTA assisted transit vehicle procurements.

(d) Transit vehicle manufacturers must implement all other applicable requirements of this part, except those relating to UCPs and DBE certification procedures.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

(f) As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

[79 FR 59594, Oct. 2, 2014]

§ 26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

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

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

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

(3) Providing technical assistance and other services;

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

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

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

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

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

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

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

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

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

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

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

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

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

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

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

Example to paragraph (f)(1):

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

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

Example to paragraph (f)(2):

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

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

Example to paragraph (f)(3):

Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to paragraph (f)(4):

In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (i.e., from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two consecutive years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in § 26.11.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011; 79 FR 59595, Oct. 2, 2014]

§ 26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

(v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and

(3)

(i) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—

(A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.

(ii) Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

- (1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
 - (2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.
 - (3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
 - (4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
 - (5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.
- (e) In a “design-build” or “turnkey” contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.
- (f)
- (1)
 - (i) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.
 - (ii) You must include in each prime contract a provision stating:
 - (A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and
 - (B) That, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.
 - (2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.
 - (3) For purposes of this paragraph, good cause includes the following circumstances:
 - (i) The listed DBE subcontractor fails or refuses to execute a written contract;

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

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

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

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

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

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

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

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

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

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

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

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

(g) When a DBE subcontractor is terminated as provided in paragraph (f) of this section, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the

recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

(h) You must include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate if the prime contractor fails to comply with the requirements of this section.

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

(j) You must require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011; 79 FR 59595, Oct. 2, 2014]

§ 26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

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

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

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a

commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

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

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

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

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.

Example to paragraph (d)(5):

DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

(6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example to paragraph (d)(6):

DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

(7) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)

(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)

(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(4) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expeditor) on a contract-by-contract basis.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in § 26.87(i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 79 FR 59595, Oct. 2, 2014]

Subpart D—Certification Standards

§ 26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in [§ 26.67\(a\)](#) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in [§ 26.67\(a\)](#). Applicants do have the obligation to provide you information concerning their economic disadvantage (see [§ 26.67](#)).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See [Appendix E of this part](#).)

(e) You must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

[[64 FR 5126](#), Feb. 2, 1999, as amended at [68 FR 35554](#), June 16, 2003]

§ 26.63 What rules govern group membership determinations?

(a)

(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see [§ 26.61\(c\)](#)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in [paragraph \(b\)](#) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate [§ 26.7\(b\)](#) and/or Title VI of the Civil Rights Act of 1964 and [49 CFR part 21](#).

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of [§ 26.89](#).

[[64 FR 5126](#), Feb. 2, 1999, as amended at [68 FR 35554](#), June 16, 2003]

§ 26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in [13 CFR part 121](#) appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.

(b) Even if it meets the requirements of [paragraph \(a\)](#) of this section, a firm is not an eligible DBE for the purposes of Federal Highway Administration and Federal Transit Administration-assisted work 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 121.104](#)), over the firm's previous three fiscal years, in excess of \$26.29 million. The Department will adjust this amount for inflation on an annual basis. The adjusted amount will be published on the Department's website in subsequent years.

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

[[74 FR 15224](#), Apr. 3, 2009, as amended at [79 FR 59596](#), Oct. 2, 2014; [85 FR 80647](#), Dec. 14, 2020]

§ 26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.*

(1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)

(i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(C) Do not use a contingent liability to reduce an individual's net worth.

(D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or State law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under [§ 26.89 of this part](#) or to any other State to which the individual's firm has applied for certification under [§ 26.85 of this part](#).

(b) *Rebuttal of presumption of disadvantage.*

(1) An individual's presumption of economic disadvantage may be rebutted in two ways.

(i) If the statement of personal net worth and supporting documentation that an individual submits under [paragraph \(a\)\(2\)](#) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under [paragraph \(b\)\(2\)](#) of this section in order to rebut the presumption of economic disadvantage in this case.

Example to paragraph (b)(1)(i):

An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than \$1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. The recipient may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than \$1.32 million.

(ii)

(A) If the statement of personal net worth and supporting documentation that an individual submits under [paragraph \(a\)\(2\)](#) of this section demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as a certifying agency, you may consider factors that include, but are not limited to, the following:

(1) Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;

(2) Whether the income was unusual and not likely to occur in the future;

(3) Whether the earnings were offset by losses;

(4) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;

(5) Other evidence that income is not indicative of lack of economic disadvantage; and

(6) Whether the total fair market value of the owner's assets exceed \$6 million.

(B) You must have a proceeding under [paragraph \(b\)\(2\)](#) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of [§ 26.87](#).

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her PNW remains above that amount.

(c) *Transfers within two years.*

(1) Except as set forth in [paragraph \(c\)\(2\)](#) of this section, recipients must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(d) *Individual determinations of social and economic disadvantage.* Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. You must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to you, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, use the guidance found in [Appendix E of this part](#). You must require that applicants provide sufficient information to permit determinations under the guidance of [appendix E of this part](#).

§ 26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.

(b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.

(1) In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.

(2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

(3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

(c)

(1) The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.

(2) Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.

(3) The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.

(4) Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

Examples to paragraph (c):

(i) An individual pays \$100 to acquire a majority interest in a firm worth \$1 million. The individual's contribution to capital would not be viewed as substantial.

(ii) A 51% disadvantaged owner and a non-disadvantaged 49% owner contribute \$100 and \$10,000, respectively, to acquire a firm grossing \$1 million. This may be indicative of a pro forma arrangement that does not meet the requirements of (c)(1).

(iii) The disadvantaged owner of a DBE applicant firm spends \$250 to file articles of incorporation and obtains a \$100,000 loan, but makes only nominal or sporadic payments to repay the loan. This type of contribution is not of a continuing nature.

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

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

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

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

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

(1) The owner's expertise must be—

(i) In a specialized field;

(ii) Of outstanding quality;

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

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

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

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

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

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

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

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[[64 FR 5126](#), Feb. 2, 1999, as amended at [79 FR 59597](#), Oct. 2, 2014]

§ 26.71 What rules govern determinations concerning control?

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

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

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

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

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

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

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

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

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

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

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

(e) Individuals who are not socially and economically disadvantaged or immediate family members may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the

socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

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

(h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

(i)

(1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

(j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

(k)

(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically

disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.

(l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the nondisadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm demonstrates to you, by clear and convincing evidence, that:

(1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

(2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned and/or controlled the firm.

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

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

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

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

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

recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

(4) A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

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

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

[[64 FR 5126](#), Feb. 2, 1999, as amended at [76 FR 5099](#), Jan. 28, 2011; [79 FR 59597](#), Oct. 2, 2014]

§ 26.73 What are other rules affecting certification?

(a)

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

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

(b)

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

(2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a

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

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

(d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.

(e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.

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

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

Example 1:

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

Example 2:

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

Example 3:

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

Example 4:

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

Example 5:

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

Example 6:

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

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

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

(h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of [§ 26.65](#). Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in [§ 26.71](#).

(i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and 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;

(ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (see [Appendix F of this part](#)). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of [paragraph \(i\)\(1\)](#) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (*e.g.*, information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of [paragraph \(i\)\(1\)](#) of this section, then it must meet the requirements of [paragraph \(h\)](#) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[[64 FR 5126](#), Feb. 2, 1999, as amended at [68 FR 35555](#), June 16, 2003; [76 FR 5099](#), Jan. 28, 2011; [79 FR 59598](#), Oct. 2, 2014]

Subpart E—Certification Procedures

§ 26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

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

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

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

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

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

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

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

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

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

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

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

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

[[64 FR 5126](#), Feb. 2, 1999, as amended at [76 FR 5100](#), Jan. 28, 2011]

§ 26.83 What procedures do recipients follow in making certification decisions?

(a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

(b) You must determine the eligibility of firms as DBEs consistent with the standards of [subpart D of this part](#). When a UCP is formed, the UCP must meet all the requirements of [subpart D of this part](#) and this subpart that recipients are required to meet.

(c)

(1) You must take all the following steps in determining whether a DBE firm meets the standards of [subpart D of this part](#):

(i) Perform an on-site visit to the firm's principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;

(ii) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing

(iii) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;

(iv) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;

(v) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.

(vi) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;

(vii) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.

(viii) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in [§ 26.85 of this part](#).

(2) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part.

(3) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.

(4) You must review all information on the form prior to making a decision about the eligibility of the firm. You may request clarification of information contained in the application at any time in the application process.

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

(e) [Reserved]

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

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

(h)

(1) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of [§ 26.87 of this part](#), except as provided in [§ 26.67\(b\)\(1\) of this part](#).

(2) You may not require DBEs to reapply for certification or undergo a recertification process. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under [paragraph \(i\)](#) of this section or relating to suspension of certification under [§ 26.88](#)), a complaint, or other information concerning the firm's eligibility. If information comes to your attention that leads you to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

(i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.

(1) Changes in management responsibility among members of a limited liability company are covered by this requirement.

(2) You must attach supporting documentation describing in detail the nature of such changes.

(3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under [§ 26.109\(c\)](#).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under [paragraph \(i\)](#) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under [§ 26.109\(c\)](#).

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

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

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

[[64 FR 5126](#), Feb. 2, 1999, as amended at [68 FR 35555](#), June 16, 2003; [76 FR 5100](#), Jan. 28, 2011; [79 FR 59598](#), Oct. 2, 2014]

§ 26.85 Interstate certification.

(a) This section applies with respect to any firm that is currently certified in its home state.

(b) When a firm currently certified in its home state (“State A”) applies to another State (“State B”) for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.

(1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.

(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.

(c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in [paragraph \(b\)](#) of this section, as the applicant firm you must provide the information in [paragraphs \(c\)\(1\)](#) through [\(4\)](#) of this section to State B.

(1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification. This includes affidavits of no change (*see* [§ 26.83\(j\)](#)) and any notices of changes (*see* [§ 26.83\(i\)](#)) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any other recipient concerning your application or status as a DBE firm.

(2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.

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

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

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

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

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

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

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

- (i) Evidence that State A's certification was obtained by fraud;
- (ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;
- (iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;
- (iv) The State law of State B requires a result different from that of the State law of State A.
- (v) The information provided by the applicant firm did not meet the requirements of [paragraph \(c\)](#) of this section.

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

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

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

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

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

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

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

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

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

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

(f)

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

- (i) The name of the firm;
- (ii) The name(s) of the firm's owner(s);
- (iii) The type and date of the action;
- (iv) The reason for the action.

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

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

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

[[76 FR 5100](#), Jan. 28, 2011]

§ 26.86 What rules govern recipients' denials of initial requests for certification?

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

(b) [Reserved]

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by [paragraph \(a\)](#) of this section is received by the firm. An applicant's appeal of your decision to the Department pursuant to [§ 26.89](#) does not extend this period.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under [§ 26.89](#).

[[64 FR 5126](#), Feb. 2, 1999. Redesignated and amended at [68 FR 35555](#), June 16, 2003; [79 FR 59598](#), Oct. 2, 2014]

§ 26.87 What procedures does a recipient use to remove a DBE's eligibility?

(a) ***Ineligibility complaints.***

(1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in [§ 26.109\(b\)](#).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) Recipient-initiated proceedings. If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) DOT directive to initiate proceeding.

(1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by [paragraph \(b\)](#) of this section.

(d) Hearing. When you notify a firm that there is reasonable cause to remove its eligibility, as provided in [paragraph \(a\)](#), [\(b\)](#), or [\(c\)](#) of this section, you must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under [§ 26.89](#), you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

(3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.

(e) **Separation of functions.** You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (*i.e.*, an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) **Grounds for decision.** You may base a decision to remove a firm's eligibility only on one or more of the following grounds:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information relevant to eligibility that has been concealed or misrepresented by the firm;

(4) A change in the certification standards or requirements of the Department since you certified the firm;

(5) Your decision to certify the firm was clearly erroneous;

(6) The firm has failed to cooperate with you (see [§ 26.109\(c\)](#));

(7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see [§ 26.73\(a\)\(2\)](#)); or

(8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by [paragraph \(g\)](#) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in [paragraph \(d\)](#) of this section.

(g) **Notice of decision.** Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under [§ 26.89](#). You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

(h) [Reserved]

(i) **Status of firm during proceeding.**

(1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in [paragraph \(g\)](#) of this section.

(j) **Effects of removal of eligibility.** When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in [paragraph \(g\)](#) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) **Exception:** If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) **Availability of appeal.** When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under [§ 26.89](#).

[[64 FR 5126](#), Feb. 2, 1999, as amended at [68 FR 35556](#), June 16, 2003; [76 FR 5101](#), Jan. 28, 2011; [79 FR 59599](#), Oct. 2, 2014]

§ 26.88 Summary suspension of certification.

(a) A recipient shall immediately suspend a DBE's certification without adhering to the requirements in [§ 26.87\(d\) of this part](#) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

(b)

(1) A recipient may immediately suspend a DBE's certification without adhering to the requirements in [§ 26.87\(d\)](#) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by [§ 26.83\(i\) of this part](#) or fails to timely file an affidavit of no change under [§ 26.83\(j\)](#).

(2) In determining the adequacy of the evidence to issue a suspension under [paragraph \(b\)\(1\)](#) of this section, the recipient shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

(c) The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.

(d) When a firm is suspended pursuant to [paragraph \(a\)](#) or [\(b\)](#) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.

(e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under [§ 26.87 of this part](#) to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

(f) While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.

(g) Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under [§ 26.87 of this part](#). If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.

(h) The decision to immediately suspend a DBE under [paragraph \(a\)](#) or [\(b\)](#) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by [paragraph \(g\)](#) of this section, is appealable to the U.S. Department of Transportation under [§ 26.89 of this part](#), as a constructive decertification.

[\[79 FR 59599\]](#), Oct. 2, 2014]

§ 26.89 What is the process for certification appeals to the Department of Transportation?

(a)

(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in [§ 26.87\(c\)](#)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

(3) Send appeals to the following address: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal or in the interest of justice.

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

(e) The Department makes its decision based solely on the entire administrative record as supplemented by the appeal. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.

(f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

(4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see [paragraph \(d\)](#) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[[64 FR 5126](#), Feb. 2, 1999, as amended at [65 FR 68951](#), Nov. 15, 2000; [68 FR 35556](#), June 16, 2003; [73 FR 33329](#), June 12, 2008; [79 FR 59599](#), Oct. 2, 2014]

§ 26.91 What actions do recipients take following DOT certification appeal decisions?

(a) If you are the recipient from whose action an appeal under [§ 26.89](#) is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under [§ 26.89](#) is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in [§ 26.87\(i\)](#) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in [§ 26.87](#).

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

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

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

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

Subpart F—Compliance and Enforcement

§ 26.101 What compliance procedures apply to recipients?

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

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

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

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

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

(b) **Compliance reviews.** The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

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

(d) **Conciliation.**

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

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

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

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

(e) *Enforcement actions.*

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

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

§ 26.105 What enforcement actions apply in FAA programs?

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

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

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

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

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

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

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

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

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

[[64 FR 5126](#), Feb. 2, 1999, as amended at [76 FR 5101](#), Jan. 28, 2011]

§ 26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) *Availability of records.*

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

(2) Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, you must transmit this information to DOT in any certification appeal proceeding under [§ 26.89 of this part](#) or to any other state to which the individual's firm has applied for certification under [§ 26.85 of this part](#).

(b) **Confidentiality of information on complainants.** Notwithstanding the provisions of [paragraph \(a\)](#) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of [14 CFR part 16](#) with respect to confidentiality of information in complaints.

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

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

[[64 FR 5126](#), Feb. 2, 1999, as amended at [68 FR 35556](#), June 16, 2003; [76 FR 5101](#), Jan. 28, 2011]



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM INFORMATION FOR BIDDERS

COTA Contact Person:

If you are in need of assistance, or have questions regarding COTA's DBE Program, please contact:

COTA DBE Program Administrator
33 N. High St.
Columbus, OH 43215
BusinessDiversity@cota.com

For certification questions or to search the M/W/DBE directories visit the following websites:

ODOT UCP <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/UCP.aspx>

ODAS M/WBE/EDGE <https://das.ohio.gov/Divisions/Equal-Opportunity/Business-Certification>

CITY OF COLUMBUS M/W/VBE <https://www.columbus.gov/odi/supplier-diversity/Business-Certifications/>

DBE* Program Purpose:

The DBE program is a federal program operating under the guidance of the United States Department of Transportation (U.S. DOT). Authorization for the program comes from 49 Code of Federal Regulations Part 26 (49 CFR 26).

The overall goal of the DBE program is to ensure that firms owned and controlled by minorities, women, and other socially and economically disadvantaged persons have the opportunity to grow and become self-sufficient in order to create a level playing field on which they can compete fairly for contracts and subcontracts in the transportation industry.

COTA recognizes certifications from the following certifying agencies; the Ohio Department of Transportation Unified Certification Program (UCP), the City of Columbus Equal Business Opportunity Commission Office, or the Ohio Department of Administrative Services. To be counted DBE firms must be certified at the time of bid submission. COTA reserves the right to accept or reject a firm's certification from other agencies on a case-by-case basis.

***COTA uses the acronym DBE to encompass all companies that are EDGE, MBE, WBE, and DBE certified by the recognized agencies listed above.**

COTA HAS SET A _____ % DBE PARTICIPATION GOAL FOR THIS CONTRACT.

If a goal has been established for this contract, all proposers/bidders must submit the following with their proposals/bids:

Enclosure 1 – Schedule of Subcontractors

Enclosure 2 – Declaration of Proposed DBE Utilization

Enclosure 3 – Affidavit of DBE Intent to Perform as a Subcontractor/Supplier/Consultant

Enclosure 4 – DBE Subcontractor/Consultant Good Faith Effort Log

LEGAL NOTICE:

Use of false, fraudulent or deceitful statements, representations or information by a prime contractor or subcontractor in furtherance of satisfying COTA's DBE Program requirements or objectives may subject the prime contractor, the subcontractor, or both to legal action pursuant to 49 CFR Part 26, including but not limited to 49 CFR 26.107, in addition to any other legal remedies available to COTA under the contract or pursuant to applicable law.

Any questions related to this document may be sent to <https://www.cota.com/dbe-program/>



COMMONLY USED TERMS:

Disadvantaged Business Enterprise (DBE):

A Disadvantaged Business Enterprise or DBE is defined as a for-profit small business concern that:

1. Is at least fifty-one percent (51%) owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which fifty-one percent (51%) of the stock is owned by one or more such individuals; and
2. Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

By definition, socially and economically disadvantaged individuals are those citizens of the United States, or lawfully admitted permanent residents, who:

- a) Have an individual personal net worth, excluding the value of their primary residence and assets of the firm applying for DBE certification, not exceeding the personal net worth standards as established by 49 CFR § 26.67;
- b) Are women or members of minority groups designated in 49 CFR § 26.5 and 26.67, including individuals who are Black Americans, Hispanic, Asian Pacific, Asian Indian, or Native American; or,
- c) Are individuals who, although not a woman or a member of one of the designated minority groups, establish social and economic disadvantage based on guidelines established in Appendix E to 49 CFR Part 26.

Commercially Useful Function:

In order for the work of a DBE firm to be counted toward the contract goals of a specific project, for which a DBE participation goal has been established, the DBE firm(s) must perform a Commercially Useful Function §26.55(c). A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved with the DBE's employees. With respect to materials and supplies used on the contract, the DBE must also be responsible for negotiating price, determining quality and quantity, ordering the materials, and installing (where applicable) and paying for the materials itself. It is the responsibility of BOTH the prime contractor and the DBE firm to ensure that the DBE firm(s) committed to the project performs a commercially useful function.

1. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
2. If a DBE does not perform or exercise responsibility for at least thirty percent (30%) of the total cost of its contract with its own workforce, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, it is presumed that the DBE is not performing a commercially useful function.

Failure of a DBE(s) to perform a commercially useful function will result in that work NOT being counted toward the prime contractor's DBE goal. Use of false, fraudulent or deceitful statements, representations or information by a prime contractor or subcontractor in furtherance of satisfying COTA's DBE Program requirements or objectives may subject the prime contractor, the subcontractor, or both to legal action pursuant to 49 CFR Part 26, including but not limited to 49 CFR § 26.107, in addition to any other legal remedies available to COTA under the contract or pursuant to applicable law.



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM INFORMATION FOR BIDDERS (cont'd...)

DBE Certification / Ohio Unified Certification Program (UCP):

In accordance with federal regulations, Disadvantaged Business Enterprises participating in COTA's DBE Program must have a current certification status with the State of Ohio Unified Certification Program (Ohio UCP), which is administered by the Ohio Department of Transportation (ODOT). For purposes of COTA's bidding procedures, a valid DBE certification MUST be in place at the time of bid/proposal submission.

The UCP's certification of any firm is effective for three years after the date of an approved application. If not certified by the Ohio UCP, COTA will honor those certifications conforming to 49 CFR 26 from other agencies receiving federal funding from the U.S. Department of Transportation, to be reviewed on a case-by-case basis.

To obtain an updated listing of certified DBE firms or to download an application for DBE certification, please visit the Ohio UCP website at <http://www.dot.state.oh.us/Divisions/ODI/SDBE/Pages/UCP.aspx>. For questions related to certification, website issues, and other general DBE program concerns, please contact the Ohio Department of Transportation DBE Program, 1980 West Broad Street, Columbus, OH 43223 or call the program office at (614) 466-2878 or email dot.sdbe@dot.ohio.gov.

Counting DBE Participation:

In order to receive credit for the participation of a DBE firm(s), the prime contractor must use DBE firms certified by the Ohio Unified Certification Program (OH UCP), which is administered by the Ohio Department of Transportation (ODOT) or similar public entity certifying DBE's in accordance with 49 CFR 26, unless otherwise noted in the contract specifications.

***** DBE Credit Will Be Counted Only For Work Performed By A Certified DBE Firm(s). *****

When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

DBE Prime Contractor:

As a DBE prime contractor, the DBE firm must also comply with the good faith efforts requirements of 49 CFR Part 26. As a DBE prime contractor, count the entire value of the work to be performed by the DBE's own forces, as well as the work that they commit to being performed by DBE subcontractors.

DBE bidders on prime contracts will be expected to make the same outreach efforts as other bidders and to document good faith efforts in situations where they do not fully meet contract goals.

DBE Subcontractor:

Count 100% of the amount paid to a DBE contractor for labor and materials provided to perform a defined and clearly measurable portion of the contract. The work must be performed by the DBE's own employees and the DBE must order and pay for all supplies and materials.

1. Count the entire amount of that portion of a construction contract (or another type of contract, such as professional, technical, consultant, or managerial services contracts or other DOT-assisted contract), that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
2. Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM INFORMATION FOR BIDDERS (cont'd...)

or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

3. When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
4. When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
5. DBE Broker – Count one hundred percent (100%) of the fee or commission received by the DBE for assistance in the procurement of materials and supplies, or fees or transportation charges for the delivery of materials or supplies to the job site. A DBE broker is a DBE firm that does not manufacture products or supply goods on a regular basis.

DBE Manufacturer:

Count one hundred percent (100%) of the value paid for materials furnished which becomes a permanent part of the project. A manufacturer is a firm that owns and operates the facilities to produce a product required by the contract and purchased by the contractor.

DBE Supplier (Regular Dealer):

Count sixty percent (60%) of the value paid for materials and supplies furnished which becomes a permanent part of the project. A supplier sells goods to the general public and maintains an inventory at an owned or leased warehouse or store.

1. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
2. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

DBE Trucking:

In order to count DBE participation for a DBE trucking company:

1. The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
2. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
3. The DBE trucking company receives credit for the total value (one hundred percent (100%)) for transportation services it provides on the Agreement, using trucks and equipment it owns or long-term leases, insures, and operates, using employees of the DBE firm.
4. The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM INFORMATION FOR BIDDERS (cont'd...)

5. 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.

Example: DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six (6) trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four (4) of the six (6) trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight (8) trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

6. For purposes of DBE trucking leases, the lease must indicate that the DBE has exclusive use 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, as 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.

DBE Replacement:

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

Before transmitting to COTA its request to terminate, the prime contractor must give notice in writing to the DBE of its intent to do so. A copy of this notice must be provided to COTA for consideration of the request to terminate. The DBE will then have five (5) days to respond and advise COTA of why it objects to the proposed termination. The five day period may be reduced if the matter is one of public necessity (e.g., safety.)

In those instances where "good cause" exists to terminate a DBE's contract, COTA will require the prime contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. COTA will require the prime contractor to notify The DBE Program Administrator immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, COTA will require the prime contractor to obtain COTA's prior approval of the substitute DBE and to provide copies of new or amended subcontracts, affidavits of DBE intent to perform as a subcontractor/sub-consultant/supplier, or documentation of good faith efforts.

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

If the Contractor desires to change a Subcontractor or add an additional Subcontractor, the Contractor shall submit in writing to the Owner:

1. The name of the new or additional subcontractor,
2. A description of the Work to be performed by the new or additional subcontractor, and
3. A statement concerning why it is necessary to change or add subcontractors.

In the event that the Contractor is replacing a DBE Subcontractor, the Contractor shall also submit in writing a documented explanation of the Contractor's good-faith efforts to find a replacement DBE Subcontractor.



DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM INFORMATION FOR BIDDERS (cont'd...)

Good Faith Effort:

Good faith effort means efforts to achieve a DBE goal or other requirement of which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the DBE program requirements.

Joint venture:

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.

GUIDANCE CONCERNING GOOD FAITH EFFORTS

When COTA establishes a contract goal on a contract, a bidder must, in order to be responsive, make good faith efforts to meet the established contract goal. The bidder can meet this requirement in either of two ways.

1. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose.
2. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve the DBE goal.

The bidder must demonstrate that the efforts undertaken, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if the efforts were not fully successful. Efforts that are merely pro forma are not considered good faith efforts to meet the goals.

To assist bidders in making the required judgment concerning good faith efforts, the following is a list of actions bidders may consider taking in obtaining DBE participation. It is not intended to be mandatory, exclusive or exhaustive. Other factors or types of efforts may be relevant.

In evaluating bidder's good faith efforts, COTA may consider:

- Whether the bidder attended any pre-solicitation or pre-bid meetings that were scheduled by COTA;
- Whether the bidder advertised in general circulation, trade association, and minority-focused media concerning subcontracting opportunities;
- Whether the bidder provided written notice to a reasonable number of specific DBEs to determine interest in the contract being solicited, in sufficient time to allow the DBEs to participate effectively;
- Whether the bidder followed up initial solicitations of interest by contacting DBEs to determine with certainty whether the DBEs were interested;
- Whether the bidder selected portions of the work to be performed by DBEs in order to increase the likelihood of meeting the DBE goals (including where appropriate, breaking down contracts into economically feasible units to facilitate DBE participation);



- Whether the bidder provided interested DBEs with adequate information about the plans, specifications, and requirements of the contract.
- Whether the bidder negotiated in good faith with interested DBEs, not rejecting DBEs as unqualified without sound reasons based on a thorough investigation of their capabilities;
- Whether the bidder made efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by COTA; and
- Whether the bidder effectively used the services of available minority community organizations; minority contractors groups; local, state and Federal minority business assistance offices; and other organizations that provide assistance in the recruitment and placement of DBEs.



DISADVANTAGED BUSINESS ENTERPRISE POLICY STATEMENT

The Central Ohio Transit Authority (COTA), a recipient of federal financial assistance from the Federal Transit Authority (FTA), has established a Disadvantaged Business Enterprise (DBE) in accordance with regulations of the U.S. Department of Transportation (US DOT), 49 CFR Part 26. As condition of receiving FTA funding, COTA signed an assurance agreement that it will comply with 49 CFR Part 26.

It is the policy of COTA to ensure that DBEs defined in Part 26.1 and 23 have an equal opportunity to receive and participate in US DOT-assisted contracts. It is also our policy:

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

COTA's Chief Diversity Officer has been delegated as the DBE Liaison Officer and in that capacity is responsible for implementing all aspects of the program. While the DBE Liaison Officer reports directly to the Deputy Chief Executive Officer, he/she has direct, independent access to the Chief Executive Officer on all matters concerning the DBE program. The requirements of the DBE program are accorded the same priority as compliance with all other legal obligations incurred by the Authority in its financial assistance agreements.

It is hereby directed that this DBE Policy Statement be posted for all COTA employees to read and be disseminated to all DBE and non-DBE business communities that perform work for COTA on US DOT-assisted contracts. This policy statement will be distributed electronically (i.e. COTA webpage) and included in all US DOT-assisted bid opportunities.



Monica Jones, Chief Diversity Officer/DBELO



Joanna M. Pinkerton, President/CEO

2/05/24
Date



SCHEDULE OF SUBCONTRACTORS

Prime Contractor / Consultant Company Name		COTA Project No.	
COTA Project Name	COTA Project No.	Description of Work To Be Performed	Amount of Subcontract
Firm Name / Address / City/State/Zip Name Address City, State, Zip	Federal Tax ID No. DBE? (Y)es or (N)o No	Business Size Avg. Annual Gross Receipts for Past 3 years <input type="checkbox"/> < \$1mill <input type="checkbox"/> > \$1mill < \$5mill <input type="checkbox"/> > \$5mill	
Name Address City, State, Zip	Federal Tax ID No. DBE? (Y)es or (N)o No	Business Size Avg. Annual Gross Receipts for Past 3 years <input type="checkbox"/> < \$1mill <input type="checkbox"/> > \$1mill < \$5mill <input type="checkbox"/> > \$5mill	
Name Address City, State, Zip	Federal Tax ID No. DBE? (Y)es or (N)o No	Business Size Avg. Annual Gross Receipts for Past 3 years <input type="checkbox"/> < \$1mill <input type="checkbox"/> > \$1mill < \$5mill <input type="checkbox"/> > \$5mill	
Name Address City, State, Zip	Federal Tax ID No. DBE? (Y)es or (N)o No	Business Size Avg. Annual Gross Receipts for Past 3 years <input type="checkbox"/> < \$1mill <input type="checkbox"/> > \$1mill < \$5mill <input type="checkbox"/> > \$5mill	
Name Address City, State, Zip	Federal Tax ID No. DBE? (Y)es or (N)o No	Business Size Avg. Annual Gross Receipts for Past 3 years <input type="checkbox"/> < \$1mill <input type="checkbox"/> > \$1mill < \$5mill <input type="checkbox"/> > \$5mill	



SCHEDULE OF SUBCONTRACTORS (cont'd...)

Prime Contractor / Consultant Company Name		COTA Project No.			
COTA Project Name		COTA Project No.			
Firm Name / Address / City/State/Zip	DBE? (Y)es or (N)o	Federal Tax ID No.	Business Size Avg. Annual Gross Receipts for Past 3 years	Description of Work To Be Performed	Amount of Subcontract
Name			<input type="checkbox"/> < \$1mill <input type="checkbox"/> > \$1mill < \$5mill <input type="checkbox"/> > \$5mill		
Address	No				
City, State, Zip					
Name			<input type="checkbox"/> < \$1mill <input type="checkbox"/> > \$1mill < \$5mill <input type="checkbox"/> > \$5mill		
Address	No				
City, State, Zip					
Name			<input type="checkbox"/> < \$1mill <input type="checkbox"/> > \$1mill < \$5mill <input type="checkbox"/> > \$5mill		
Address	No				
City, State, Zip					
Name			<input type="checkbox"/> < \$1mill <input type="checkbox"/> > \$1mill < \$5mill <input type="checkbox"/> > \$5mill		
Address	No				
City, State, Zip					

The bidder shall list all subcontractors (both DBE and non-DBE) in accordance with Section 2-1.054 of COTA General Conditions and per Title 49, Section 26.11 of the Code of Federal Regulations. This listing is required in addition to listing DBE Subcontractors elsewhere in the bid or proposal.

Date

Signature of Authorized Representative

Title



DECLARATION OF PROPOSED DBE UTILIZATION

This Page Must Be Completed By Prime Bidder To Indicate The Amount (Percentage) Of DBE Participation. This Form is a Required Submission with the Bid / Proposal to COTA.

The undersigned, as a representative of the entity, _____, submitting a bid/proposal for the _____ project, hereby acknowledges that the DBE goal established for this project is _____%.

Note: Bidder Shall Make One Of The Two Certifications Noted Below:

DBE Goal Met. The Bidder further represents that the proposed level of DBE participation as set forth in the enclosed Schedule of DBE participation for this project is _____ % and represents an attainment of the DBE participation goal. The bidder has met the overall Disadvantaged Business Enterprise participation goal with a total DBE Commitment Amount of \$ _____ (dollars). The bidder agrees that the DBE firm(s) listed in Schedule of DBE Participation will be used to accomplish the DBE participation commitment for this contract, for at least the dollar amounts set forth herein. Affidavits of Intent confirming the proposed participation of the DBEs set forth on the Schedule of DBE Participation are attached.

DBE Goal Not Met. The prime contractor has concluded that it is unable to achieve the DBE participation goal set for this contract and hereby requests a waiver of the overall goal. The bidder verifies that it has employed good faith efforts to meet the established DBE goal and has submitted documentation of those efforts along with its bid documentation. The bidder further agrees that the DBE firms listed in the Schedule of DBE Participation will be used to accomplish the DBE participation goal for this contract, for at least the dollar amounts set forth herein. Affidavits of Intent confirming the proposed participation of the DBEs set forth on the Schedule of DBE Participation are attached.

COTA Project Number		Total bid/ Contract Amount	\$	
Name of DBE Company	Contact Person	Scope of Work	Percentage of Total Bid ÷ Subcontract Amount	Amount of Subcontract
			%	
			%	
			%	
			%	
			%	
			%	
Total DBE Commitment				
Total Percentage of DBE Commitments (Total \$ DBE participation ÷ Total \$ Bid Amount)				

Attach Additional Copies, If Necessary.

The undersigned further agrees to enter into a formal agreement with DBEs listed above or approved substitutions, for the work described in this schedule conditioned upon the award of a contract by COTA. The undersigned will provide COTA's DBE Program Administrator a copy of the executed contract(s) with all DBE firms to perform on this contract, upon request.

Signature

Title

Date



**AFFIDAVIT OF DBE INTENT TO PERFORM AS A
SUBCONTRACTOR/SUBCONSULTANT/SUPPLIER {PART 1 OF 2}**

INSTRUCTIONS: Complete one (1) form for **EACH** certified Disadvantaged Business Enterprise (DBE) committed to performing on this contract.

COTA Project Name			Project No.		
Prime Contractor/Consultant Company Name					
Name of Person Completing This Form					
Is Prime Contractor/Consultant certified as a Disadvantaged Business Enterprise (DBE)?				<input checked="" type="radio"/> Yes	<input type="radio"/> No
DBE FIRM INFORMATION					
DBE Firm Name					
DBE Firm Contact					
DBE Firm Address					
			City	State/Zip	
Phone:		Email:			
DBE Subcontract Amount					

- The undersigned DBE firm intends to perform work in connection with the above referenced project as:

An individual
 A partnership
 A corporation
 A joint venture
 Other
- The undersigned affirms that (s)he is a duly authorized official representing the proposed DBE or (Minority, Women-Owned, EDGE, or Small Business Enterprise, if specified as eligible to count toward the DBE goal) and affirms its certification has not expired nor been revoked. The undersigned also affirms that the DBE firm is certified to perform the work described herein and that its current certification letter will reflect appropriate NAICS codes associated with the described scope of work.

Certifying Agency (Attach Copy of Current Certifications):

<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
DBE	MBE	EDGE	MBE/WBE
ODOT USP	ODAS	ODAS	CITY COLUMBUS

- If awarded the contract, the undersigned intends to enter into a subcontract to perform the work described in Part 2 of this form for the prices/subcontract amount indicated.
 - If DBE Firm Is A Third-Tier Subcontractor, This Form Must Also Be Executed By The Second-Tier Subcontractor That Has The Subcontract Agreement With The DBE Firm.*

X	
Authorized Signature of Prime Contractor	Title:
X	
Authorized Signature of DBE Subcontractor/ Consultant/ Supplier (SECOND TIER):	Title:
X	
Authorized Signature of DBE Subcontractor/ Consultant/ Supplier (THIRD TIER):	Title:

(THIS FORM CONTINUES ON THE NEXT PAGE)

AFFIDAVIT OF DBE INTENT TO PERFORM AS A SUBCONTRACTOR/SUBCONSULTANT/SUPPLIER {PART 2 OF 2}

* Please Use A Separate Form for EACH DBE Firm To Be Utilized On The Project.

* Fill In ONLY The Appropriate Section For The Specified DBE Firm Listed On Part 1 Of This Form.

Description of Work To Be Performed by DBE Certified Subcontractors						
Bid Item #	Item Description	Scope of Work	NAICS Code	Unit Price	Quantity	Total
				\$		\$
				\$		\$
Total Value of Work To Be Performed By Certified DBE Firm					\$	
Subtract (Minus) Any Amount to Be Sublet to a Non-DBE Firm(s)					()	
Total Value DBE Subcontractor					\$	
Description of Work To Be Performed by DBE Certified Subconsultants						
Work Item(s) to be performed by DBE	Description of Work	#Hours or Units			Total Value	
					\$	
					\$	
					\$	
Total Value of Work To Be Performed By Certified DBE Firm					\$	
Subtract (Minus) Any Amount to Be Sublet to a Non-DBE Firm(s)					()	
Total Value of DBE Subconsultant					\$	
Items of Work To Be Performed By DBE Trucking Firm(s)						
Description of Material(s) Hauled	Estimate of Ton/C.Y	Estimate of # of Trucks Required	Number of Trucks Owned or Leased		Total Dollar Value	
			O=		\$	
			L=			
			O=		\$	
			L=			
			O=		\$	
			L=			
Total Value DBE Trucking Firm					\$	
					%	
Items of Work To Be Performed by DBE Supplier [Non-Manufacturer]:						
Description of Material(s) Supplied	Total Contract Value	Multiply X .60		Total DBE Credit Allowed (Contract Value*.60)		
		60%				
		60%				
Total Value of DBE Supplier				\$		

***Note: Count only the portions of work to be performed by a certified DBE firm for all of the above mentioned categories.**

***Important Notice:** Failure to submit **BOTH PARTS** of this completed and signed form for each DBE firm whose quote/bid is being counted toward the established DBE participation goal, may constitute a **MATERIAL DEFECT** in your bid submission and may result in a determination of your bid as **NON-RESPONSIVE**.

DBE Subcontractor/Supplier Good Faith Effort Log

Project: _____

Bidders must use this form to document their good faith efforts at attaining the DBE goal for this project. COTA will contact DBE subcontractors and suppliers to verify statements made and actions recorded on this log.

DBE Subcontractor/Supplier: _____ **Type of Work:** _____

Date of Contact	Type of Contact/Reason for Contact	Name of Contact	Follow up/decision by bidder/ Reason for decision

DBE Subcontractor/Supplier: _____ **Type of Work:** _____

Date of Contact	Type of Contact/Reason for Contact	Name of Contact	Follow up/decision by bidder/ Reason for decision

Photocopy this sheet and attach photocopy to this page if more space is needed to list additional contacts made with the DBE subcontractor/supplier identified above. Use the following descriptions for guidance concerning the categories of information requested above:

Type of Contact includes, but is not limited to, email, telephone, fax, meeting. **(Include email and phone #'s used to make contact)**

Reason for Contact includes, but is not limited to, describing subcontract opportunities, inviting quotes, reviewing plans, discussing quotes, restating invitation to DBE to submit quotes, following up, accepting quotes, and/or rejecting quotes.

Name of Contact include the name of the person contacted.

Follow up/decision by Bidder is the next step the bidder will take in the process of soliciting a DBE subcontractor's participation in the project. Follow up concludes with a decision by the bidder to either accept or reject the DBE as a subcontractor and, if rejected, the reason therefore.

As part of the good faith effort investigation performed by COTA, **the listed DBE subcontractor and/or supplier will be contacted to verify the contacts and efforts made by the bidder identified in this form.** Attach any and all supporting documentation (letters, faxes, etc.) that verify the above representations concerning bidder's good faith efforts to obtain the above listed DBE's participation. Contract award may be contingent on bidder's good faith efforts.

Complete one of these forms for each DBE subcontractor or supplier contacted. Photocopy this sheet if additional pages are required. If you are in need of assistance or have questions regarding COTA's DBE Program, please contact the DBE Program Administrator at HowardQJ@cota.com.



COMMERCIALLY USEFUL FUNCTION (CUF) FORM

CUF FORM Per 49 CFR 26.55, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation..." This form is for the purposes of reviewing DBEs for compliance with the CUF requirements for credit.

Office of Transit staff will perform CUF reviews on DBE prime and sub-contractors for ODOT FTA-assisted contracts while subrecipient staff will perform the review on DBE prime and sub-contractors for subrecipient contracts (construction and professional services). The review should be conducted when the DBE first begins work. Monitor compliance through the course of the project.

Organization Name: Project Name or PID: County: Prime Contractor: DBE Project Manager: DBE Start Date:	CUF Reviewer: Reviewer Title: Review Date: DBE Anticipated Completion Date:
---	--

DBE Name:

Provide a brief description of the DBE's scope of work:

	Yes	No
<u>Supervision</u> Does the DBE have a superintendent/foreman on project? Does the superintendent/foreman work exclusively for the DBE? If not, who does he/she work for? Who does the superintendent/foreman report to?	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
<u>Employees</u> Does the DBE have employees on the job? Who assigns work to them? What is the name of the company that pays the DBE's employees?	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
<u>Performance</u> Has any other contractor performed any of the DBE's work? If yes, who and what work items?	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>
<u>Equipment</u> Whose name appears on the equipment? Does DBE own or lease equipment? Does DBE use prime contractor's equipment?	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
<u>CUF</u> Does it appear the DBE is performing a CUF? If DBE is not performing a CUF, contact ODOT Central Office	<input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/>

COMMENTS:



MEMORANDUM OF UNDERSTANDING

RECITALS

WHEREAS, the State of Ohio is committed to ensuring nondiscrimination in the award and administration of United States Department of Transportation (USDOT)-assisted contracts and achieving the objectives set forth in the Code of Federal Regulations (CFR), Title 49, Parts 23 and 26;

WHEREAS, 49 CFR §26.21 provides that the following USDOT recipients must have a Disadvantaged Business Enterprise (DBE) Program:

- All Federal Highway Administration (FHWA) primary recipients receiving funds authorized by a statute to which 49 CFR Part 26 applies;
- Federal Transit Administration (FTA) recipients receiving planning, capital and/or operating assistance who will award prime contracts, excluding transit vehicle purchases, the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year;
- Federal Aviation Administration (FAA) recipients receiving grants for airport planning or development who will award prime contracts the cumulative total value of which exceeds \$250,000 in FAA funds in a Federal fiscal year;

WHEREAS, 49 CFR §26.81 requires that all USDOT recipients participate in a statewide Unified Certification Program (UCP);

WHEREAS, the UCP shall provide "one-stop shopping" to applicants for DBE¹ certification, such that an applicant is required to apply only once for DBE certification that will be honored by all USDOT recipients in the State;

WHEREAS, the UCP shall comply with all certification standards and procedures set forth in 49 CFR Part 26 Subparts D and E;

WHEREAS, the UCP shall implement USDOT directives and guidance concerning certification matters;

WHEREAS, the UCP shall cooperate fully with oversight, review, and monitoring activities of USDOT and its operating administrations;

¹ For the purposes of this MOU, "DBE" shall be read to include "ACDBE." As it pertains to ACDBEs, where this MOU references 49 CFR Part 26, it shall be read to also include 49 CFR Part 23.

WHEREAS, the Ohio UCP shall make all certification decisions on behalf of all USDOT recipients within the State of Ohio as it relates to participation in the DBE Program;

WHEREAS, all certifications by the Ohio UCP shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE;

WHEREAS, the Ohio UCP was established in accordance with the requirements set forth in 49 CFR §26.81 and was approved by USDOT for unconditional implementation as of April 25, 2005;

WHEREAS, in July 2015, FHWA conducted a review of the Ohio UCP and issued recommendations for changes that needed to be implemented to: (1) ensure the Ohio UCP adheres to standardized procedures for carrying out all aspects of certification; (2) ensure all certification staff receive adequate training in all certification standards and procedures; and, (3) ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs;

WHEREAS, in March 2019, the FHWA Ohio Division, FHWA Headquarters Office of Civil Rights (OCR), and USDOT Office of the Secretary of Transportation (OST) Departmental Office of Civil Rights (DOCR) conducted a review of the Ohio UCP MOU and requested revisions;

WHEREAS, the original Ohio UCP Agreement requires updating to ensure the recommended changes are implemented by all USDOT recipients within the State of Ohio as it relates to participation in the DBE Program and the Ohio UCP;

NOW THEREFORE, in consideration of the promises and covenants contained herein the participants in the Ohio UCP agree as follows:

SECTION 1: COMMON GOALS OF THE OHIO UCP

- 1.1 Through this Memorandum of Understanding (MOU), all Participants agree the regulations set forth by the USDOT in 49 CFR Part 26, Subparts D and E place primary responsibility for the certification process upon State Transportation agencies.² The Ohio Department of Transportation (ODOT) is responsible for working with all Ohio UCP Representatives to ensure uniformity and consistent standards are met.
- 1.2 Ohio UCP Participants shall seek to ensure the Ohio UCP complies with all aspects of 49 CFR Parts 23 and 26 as applicable.
- 1.3 Ohio UCP Representatives will work collaboratively to decide on recommended and mandatory trainings for all classes of UCP Participants. All UCP Representatives must attend semiannual calls and/or in person meetings. The purpose of this MOU is to

² <https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise>

further define the roles and responsibilities of the UCP Participants as they relate to implementation, management, and certification of firms.

SECTION 2: DEFINITIONS

- 2.1 *Airport Concession Disadvantaged Business Enterprise (ACDBE)* - "A concession that is a for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it."³
- 2.2 *Concession* - "One or more of the types of for-profit businesses listed in paragraph (1) or (2) of this definition:

(1) A business, located on an airport subject to 49 CFR Part 23, that is engaged in the sale of consumer goods or services to the public under an agreement with the recipient, another concessionaire, or the owner or lessee of a terminal, if other than the recipient.

(2) A business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport subject to 49 CFR Part 23, as long as the activities take place on the airport: Management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.

Example to paragraph (2): A supplier of goods or a management contractor maintains its office or primary place of business off the airport. However, the supplier provides goods to a retail establishment in the airport; or the management contractor operates the parking facility on the airport. These businesses are considered concessions for purposes of this part.

(3) For purposes of this definition, a business is not considered to be "located on the airport" solely because it picks up and/or delivers customers under a permit, license, or other agreement. For example, providers of taxi, limousine, car rental, or hotel services are not considered to be located on the airport just because they send shuttles onto airport grounds to pick up passengers or drop them off. A business is considered to be "located on the airport," however, if it has an on-airport facility. Such facilities include in the case of a taxi operator, a dispatcher; in the case of a limousine, a booth selling tickets to the public; in the case of a car rental company, a

³ https://www.ecfr.gov/cgi-bin/text-idx?SID=273dc0eae674334fef562f8dacc34f2&mc=true&node=se49.1.23_13&rgn=div8

counter at which its services are sold to the public or a ready return facility; and in the case of a hotel operator, a hotel located anywhere on airport property.

(4) Any business meeting the definition of concession is covered by this definition, regardless of the name given to the agreement with the recipient, concessionaire, or airport terminal owner or lessee. A concession may be operated under various types of agreements, including but not limited to the following:

- (i) Leases
- (ii) Subleases
- (iii) Permits
- (iv) Contracts or subcontracts
- (v) Other instruments or arrangements

(5) The conduct of an aeronautical activity is not considered a concession for purposes of this definition. Aeronautical activities include scheduled and non-scheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight carrying capacities; fixed base operators; flight schools; recreational service providers (e.g., sky-diving, parachute-jumping, flying guides); and air tour services.

(6) Other examples of entities that do not meet the definition of a concession include flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, telephone and electric service to the airport facility, holding companies, and skycap services under contract with an air carrier or airport."³

2.3 *Disadvantaged Business Enterprise* - "A for-profit small business concern (1) that is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and (2) whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it."⁴

2.4 *Non-Binding Agency* - The status a USDOT recipient within the State of Ohio will be designated as it relates to Ohio UCP participation prior to that recipient executing the Signature and Declaration of Status page of this MOU.

2.5 *Personal Net Worth* - "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

⁴ http://www.ecfr.gov/cgi-bin/text-idx?SID=de325fd5185aa7fb420ac1f2a3480577&mc=true&node=se49.1.26_15&rgn=div8

individual's ownership interest in an applicant or participating DBE firm; or, the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse." ⁴

- 2.6 *Quality Assurance Review* - An annual review conducted by a third party to ensure UCP Representatives are in compliance with all certification standards and procedures set forth in 49 CFR Part 26 Subparts D and E and this MOU.
- 2.7 *Recipient* - "Is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance." ⁴
- 2.8 *Socially and Economically Disadvantaged Individual* - "Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control."

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition." ⁴

2.9 *UCP Participant* - A USDOT recipient with a DBE Program that does not include specifications for DBE Certification and Revocation.

2.10 *UCP Representative* - A UCP Participant with a DBE Program that includes specifications for DBE Certification and Revocation. Any USDOT recipient could potentially be a UCP Representative. UCP Representatives meet semiannually, and as needed, to identify UCP certification standards, training opportunities for all UCP Participants, and implement USDOT directives and guidance concerning certification matters.

SECTION 3: MEMBERSHIP AND RIGHTS/RESPONSIBILITIES OF THE UCP - UCP REPRESENTATIVES

3.1 **Participation.** UCP Representatives approve or deny certification applications. Information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with Federal, State and Local laws, must be safeguarded from disclosure to unauthorized persons.

UCP Representatives make certification decisions with respect to the DBE Program. UCP Representatives must be able to administer the procedures defined within this MOU. Any USDOT recipient in Ohio could potentially be a UCP Representative.

As per 49 CFR 26.81(a)(2), this MOU commits UCP Representatives to ensuring they have sufficient resources and expertise to carry out the requirements of 49 CFR Part 26.

3.2 **Independence.** Each UCP Representative will continue to administer its own DBE Program, but shall use the forms, guidelines, and procedures in its certification process in accordance with 49 CFR Part 26 and this MOU. The UCP Representatives will make all certification decisions on behalf of the UCP. Only those certification decisions made by USDOT recipients with the designated status of UCP Representative

at the time the certification decision is made shall be binding on USDOT recipients within the State of Ohio.

- 3.3 **Ratification.** All recipients of Federal funds administered by the USDOT, either directly or indirectly, must ratify and comply with the Ohio UCP MOU. Failure to ratify the agreement may result in the loss of Federal funds from USDOT. UCP Representatives must comply with the Terms and Conditions of this MOU in accordance with 49 CFR Part 26.
- 3.4 **Attend and participate in UCP Meetings.** UCP meetings shall be held semiannually and on an as needed basis. The purpose of UCP meetings shall include, but not be limited to: addressing challenges, including reviewing difficult cases; discussing potential changes to standardized forms, processes and procedures; and, providing training. Each UCP Representative shall designate at least one certification officer to attend and participate in UCP meetings. If the designated certification officer cannot attend a UCP meeting, a replacement must attend. Failure to comply with 49 CFR Part 26, which includes (but is not limited to) participation in UCP meetings may result in removal of the UCP Representative rights.
- 3.5 **Attend Training.** UCP Representatives shall ensure certification staff are adequately trained to perform certification duties. UCP Representatives must cover the cost of all certification training and attend mandatory certification training required by the USDOT.

UCP Representatives are responsible for ensuring and documenting the following:

- The current certification application-review staff successfully complete all nine of the certification training modules provided by the USDOT Departmental Office of Civil Rights (DOCR) before they begin to review certification applications.
- The current certification application-review staff view DOCR's "Recorded Presentation of the Rule," which describes changes to the DBE rules instituted through the DOT final rule issued October 2, 2014 before they begin to review certification applications.
- The current certification application-review staff complete all new, revised, or updated training modules or materials when DOCR makes them available through its website.
- A responsible person keeps accurate training records for all certification application-review staff.

UCP Staff who have not documented their completion of the mandatory training and viewing of the "Recorded Presentation of the Rule" are not permitted to review certification applications.

- 3.6 **Provide "One-Stop Shopping".** All UCP Representatives shall use the application and personal net worth forms (and accompanying instructions and checklists) provided on the USDOT Departmental Office of Civil Rights' website without change or revision. Ohio UCP Representatives agree ODOT shall draft certification-related forms, letter

templates, guidelines and procedures for the UCP. ODOT shall distribute all draft certification-related forms, letter templates, guidelines and procedures to UCP Representatives for comment and concurrence before use by all UCP Representatives is implemented. Each UCP Representative shall use the forms, guidelines, letter templates, and procedures as agreed upon under this MOU. All forms shall be available on the UCP's webpage.

- 3.7 **Tracking.** UCP Representatives agree ODOT shall make available systems for receiving, processing and tracking certification applications and will host the official UCP directory.

AASHTOWare Project is a web-based software product developed by the American Association of State Highway and Transportation Officials (AASHTO). ODOT is a licensee of this product. AASHTOWare Project's Civil Rights & Labor module receives and processes the data required to meet federal and state requirements for state transportation agencies' external civil rights and labor compliance activities, including DBE certification. The Ohio UCP uses ODOT's implementation of AASHTOWare Project and its Civil Rights & Labor module as its online certification database (hereinafter referred to as "AWP CRL"). ODOT is the manager for AWP CRL and provides system access and update capabilities to the UCP. All certifications made by UCP Representatives are housed in AWP CRL. AWP CRL shall be updated by all UCP Representatives (including additions, deletions, and other changes as soon as they are made).

- 3.8 **Records Retention.** Each UCP Representative shall be responsible for maintaining its certification files as agreed upon in this MOU.

Certified firms: Maintain the complete certification file for each certified DBE firm for the duration of time the firm remains certified. If a certified DBE firm has its certification removed, maintain the certification file for 30 years from the date on which the certification was removed. After 30 years have elapsed, destroy all documents.

Firms that do not become certified: Maintain the certification file for 30 years from the date on which the final action was taken (applies to firms for which no certification decision was made due to withdrawal) or final decision was made (applies to firms denied certification). After 30 years have elapsed, destroy all documents.

Certification files may be stored electronically.

- 3.9 **Electronic Files.** Each UCP Representative agrees to maintain its certification files in a manner consistent with the file maintenance practices utilized by the other UCP Representatives. Each UCP Representative agrees to make its certification files available to the other UCP Representatives by electronic means to facilitate file sharing as necessary.

- 3.10 **Service Area Responsibility.** It is the intent of this MOU that ODOT will be responsible for certifying firms primarily engaged in the delivery of goods and services pertaining to heavy highway design, construction and maintenance. These goods and services may include, but are not limited to, heavy highway construction contractors, road and bridge contractors, specialty construction contractors, engineering consultants, specialty consultants, highway, road and bridge related material suppliers and fabricators and highway, road and bridge related maintenance services. For firms not so engaged, it is the intent of this MOU that UCP Representatives certify firms whose principal place of business is located within the UCP Representative's geographic region, as defined by mutual agreement.

An FTA or FAA recipient UCP Representative shall accept applications from firms whose principal place of business is located within its geographic region as well as interstate certification applications per the schedule included in ODOT's Certification Standard Operating Procedure.

An FAA recipient UCP Representative shall be responsible for concessionaires (i.e. - firms applying for certification as an ACDBE under 49 CFR Part 23) other than those concessionaires engaged in the delivery of goods and services pertaining to heavy highway design, construction and maintenance.

- 3.11 **Referral.** If a UCP Representative elects not to process an application submitted by a firm who is primarily engaged in the delivery of services related to a different mode or whose principal place of business is located outside the UCP Representative's geographic region, the UCP Representative shall forward the application in a timely manner to ODOT for processing or redistribution to another UCP Representative. A referral of an applicant does not alter the requirements of 49 CFR Part 26 regarding the time allowed to render certification decisions.

- 3.12 **Termination of UCP Representative Status.** Any UCP Representative, other than ODOT, may elect to terminate its status as an UCP Representative of the Ohio UCP. A UCP Representative wishing to terminate its UCP Representative status must notify ODOT and execute a new Signature and Declaration of Status page as a (non-certifying) UCP Participant bound by the requirements set forth in this MOU.

If any UCP Representative (Complainant) believes that another UCP Representative (Respondent) is not fulfilling its responsibilities under this MOU, the Complainant Agency may share its concerns with the other UCP Representative. Respondent Agency shall be given an opportunity to address Complainant Agency's concerns. If the concerns are not adequately addressed, the UCP Representatives may elect to revoke the Respondent Agency's status as a UCP Representative of the Ohio UCP at which time Respondent Agency must execute a new Signature and Declaration of Status page as a (non-certifying) UCP Participant.

- 3.13 **Redistribution of Certification Cases.** If a UCP Participant's status as a UCP Representative is terminated by election or revocation, it shall forward all of its certification files to ODOT, who has made a commitment to certify firms for any UCP

Representative that requires assistance. ODOT is responsible for taking over and redistributing certification cases from UCP Representatives no longer performing certification.

- 3.14 **Confidentiality.** UCP Representatives will safeguard (from disclosure to unauthorized persons) information that may reasonably be considered confidential business information, consistent with Federal, State, and Local laws. Notwithstanding any contrary provision of State or Local laws, the UCP Representatives will not release personal financial information submitted in response to the personal net worth requirements to a third party (other than USDOT) without written consent of the submitter.
- 3.15 **Certification Approval or Disapproval Processes and Procedures.** ODOT, in conjunction with other UCP Representatives, will continually make improvements to certification policies and procedures, and recommend training to the UCP. Certification requests shall be handled in the order in which they are received. This will ensure the first files are not preempted by a certification request received at a later date. UCP Representatives must check the ODOT SharePoint intake list to ensure DBE applicants are not applying at multiple agencies simultaneously. UCP Representatives will provide acknowledgement of the application to the DBE applicant within seven (7) days of receipt. UCP Representatives will notify the DBE applicant within thirty (30) days of receipt of its application either that the application is complete and suitable for evaluation or that additional information and/or action is required. The DBE certification decision shall be made within ninety (90) days of receipt of ALL required information. This period may be extended one time for no more than an additional sixty (60) days, with written notice to the firm, specifically explaining the reasons for the extension. When evaluating a firm's eligibility, a UCP Representative shall perform its due diligence to confirm the veracity of the information provided by the firm to ensure eligibility criteria are met. Once a DBE has been certified, it shall remain certified unless certification has been removed through the procedures in 49 CFR §26.87.

Denials: If the request for certification is denied, the UCP Representative will provide the applicant with a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. The firm may appeal the denial to USDOT. The UCP Representative's denial will remain in effect pending the outcome of any appeal to USDOT. The firm cannot reapply for certification until 12 months has elapsed from the date the denial notice was received by the firm. All documents and other information on which the denial is based will be made available to the applicant, upon written request.

NAICS Code/Descriptor Assignments: In accordance with 49 CFR §26.71, a DBE shall be assigned the most specific North American Industry Classification System (NAICS) code(s) available for the type(s) of work the firm can perform. The DBE shall also be assigned any applicable descriptor that describes in detail the specific work the firm can perform. UCP Representatives will consult the U.S. Census Bureau's NAICS code directory and the Ohio UCP Descriptors Table in determining which NAICS code(s) and

descriptor(s) should be assigned. The UCP Representatives agree to review the Descriptors Table annually and recommend any necessary changes.

Withdrawals: A firm applying for DBE certification or additional NAICS codes/descriptors can withdraw its application at any time prior to the UCP Representative issuing its decision on the application. The firm is permitted to resubmit its application without being subject to a waiting period unless the firm exhibits a pattern of frequently withdrawing its application before a decision can be issued.

Unless a firm has initiated a request to withdraw its application, the UCP Representative shall complete the certification process and render a decision as to whether the firm should be certified. The UCP Representative shall not, prior to issuing its decision to deny a request for initial certification, solicit the firm to withdraw its application for certification in lieu of being issued the denial.

- 3.16 **On-Site Review.** An on-site review to the principal offices of the applicant firm shall be conducted prior to certification and as needed thereafter by the UCP Representative (by an individual who has completed his/her required certification training). The principal officers of the firm must be interviewed and their resumes and/or work histories must be reviewed. Also, a visit must be made to the job sites if there are such sites on which the firm is working at the time of the eligibility investigation in the jurisdiction or local area. The site visit report performed by any other recipient with respect to a firm applying for certification may be relied upon.
- 3.17 **Use of Data Brokers.** UCP Representatives are encouraged to pay for and use the services of a data broker (e.g., LexisNexis Accurant) to perform public records research on applicants for certification and their owners and to research currently certified firms in light of changed circumstances, a complaint, or other information concerning a firm's eligibility. For a firm seeking initial certification, data broker search results shall be documented in the firm's file. Data broker search results shall not be provided to firms.
- 3.18 **Certification Reviews; No Recertification Process.** UCP Representatives do not require DBE firms to reapply for certification or undergo a recertification process. UCP Representatives may and should update on-site reviews that are over three years old. UCP Representatives should conduct a certification review of a DBE firm, including a new on-site review, if appropriate in light of changed circumstances, a complaint, or other information concerning a firm's eligibility.
- 3.19 **Declaration of Change.** Within 30 days of the occurrence of a change in circumstances affecting a DBE firm's ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26 or any material change in the information provided in the DBE firm's application form, a DBE firm will be required to provide an unsworn declaration executed under penalty of perjury of the laws of the United States informing the UCP in writing of the change. If this declaration is not provided in a timely manner, the UCP Representative will commence proceedings to remove the

DBE firm as outlined in 49 CFR §26.87 for failure to cooperate under 49 CFR §26.109(c).

- 3.20 **Annual Declaration.** Every year on the anniversary date of certification, a DBE firm will be required to provide a declaration affirming that there have been no changes in the firm's ability to meet size, disadvantaged status, ownership, or control requirements or any material changes in the information provided in its initial application form. The declaration will specifically affirm the DBE firm continues to meet Small Business Administration (SBA) business size criteria and the threshold of overall gross receipts. If this declaration is not provided in a timely manner, the UCP Representative will commence proceedings to remove the DBE firm as outlined in 49 CFR §26.87 for failure to cooperate under 49 CFR §26.109(c).
- 3.21 **Removal and Appeal Process.** A UCP Representative who determines there is reasonable cause to believe a currently certified firm is ineligible must provide written notice to the firm that it proposes to remove the firm's eligibility to remain certified. The notice must set forth the reasons for the proposed removal and reference the evidence in the record on which each reason is based.

When a UCP Representative notifies a firm there is reasonable cause to remove its eligibility, it must give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

Upon receiving the Notice of Intent to Remove Eligibility, the firm may make a written request for a hearing within thirty (30) days of receipt of the Notice. If the firm requests a hearing, the UCP Representative must schedule the hearing in a timely manner. The UCP Representative must maintain a complete record of the hearing by any means acceptable under State law for the retention of a verbatim record of an administrative hearing. The hearing shall be presided over by an individual who is knowledgeable about the DBE Program and DBE certification standards and procedures. The hearing officer must be an individual who did not take part in any actions leading to or seeking to implement the proposal to remove the firm's eligibility and who is not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. The hearing officer shall submit his or her report and recommendation to the UCP Representative in a reasonable amount of time following the conclusion of the hearing. In lieu of a hearing, or as part of the hearing, the firm may elect to present information and arguments in writing.

At the conclusion of the hearing and/or review of the written information and arguments, the UCP Representative shall issue a written Notice of Decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of the decision and of the availability of an appeal to USDOT within 90 days of the date of the final decision at the following address:

U.S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Avenue, SE, Room W78-103
Washington, D.C. 20590

The UCP Representative will make the final decision on removing certification. All internal appeals must be exhausted prior to a firm appealing to USDOT. In such a situation, the UCP Representative bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as would be required during a hearing.

The firm for which certification was removed will not be eligible to reapply for certification for a period not to exceed 12 months from the date certification was removed.

Following USDOT certification appeal decisions, all UCP Representatives take actions as prescribed in 49 CFR 26.91 and as directed by USDOT.

- 3.22 **Summary Suspension of Certification.** UCP Representatives must comply with USDOT's requirements concerning summary suspension of certification (49 CFR 26.88).
- 3.23 **Update of DBE Information.** UCP Representatives are responsible for updating DBE certification information in the certification system (for example, making sure gross receipts and personal net worth are kept up to date, contact information updated).
- 3.24 **USDOT Denial Repository - Provide Certification Denial Information.** UCPs are required to provide USDOT with the following information in the case of certification denial:
 - Name of the Firm
 - Name of the Firm's Owner
 - Type and date of the action
 - The reason for the action

(<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/search-dbe-appeals-and-denials>).
- 3.25 **USDOT Denial Repository - Check Application for New Applicants.** USDOT requires UCP Representatives to check the database at least once every month to determine whether any firm that is applying for certification or that is already certified is in the ineligibility database. In the event a firm is in the ineligibility database, the UCP reviewing the current request must promptly request a copy of the listed decision from the UCP that identified the firm as being ineligible
(<https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/search-dbe-appeals-and-denials>).
- 3.26 **Interstate Certification.** UCP Representatives must comply with the USDOT interstate certification guidelines.

- 3.27 **Reciprocity Agreement.** The Ohio UCP does not accept reciprocity agreements. In order to be considered a DBE, the firm must be certified by a Representative of the Ohio UCP.
- 3.28 **Supportive Services.** ODOT has a supportive services program in place. All certified DBE firms that can perform heavy highway-related services are eligible to request services through the program. ODOT will continue to administer the supportive services program and will work closely with the UCP Representatives to identify any additional areas where the services may be needed.
- 3.29 **Annual Reporting to USDOT.** ODOT is responsible for the submittal of the annual report to the USDOT Office of Civil Rights. The report provides the percentage and location of certified DBE firms in the Ohio UCP Directory controlled by the following: (1) women; (2) socially and economically disadvantaged individuals (other than women); and, (3) individuals who are women and are otherwise socially and economically disadvantaged individuals.

SECTION 4: MEMBERSHIP AND RIGHTS/RESPONSIBILITIES OF THE UCP - UCP PARTICIPANTS

- 4.1 **Participation.** All USDOT recipients must participate in a statewide UCP. UCP Participants must comply with the Terms and Conditions of this MOU in accordance with 49 CFR Part 26.
- 4.2 **Ratification.** All recipients of Federal funds administered by USDOT, either directly or indirectly, must ratify and comply with the Ohio UCP MOU. Failure to ratify the agreement may result in the loss of Federal funds from USDOT. UCP Participants must comply with the Terms and Conditions of this MOU in accordance with 49 CFR Part 26.
- 4.3 **Referral.** Should any firm contact a UCP Participant about DBE certification, the UCP Participant shall quickly refer the request to a UCP Representative. Non-Binding Agencies and UCP Participants shall not certify firms as DBEs on behalf of the Ohio UCP. Any applications for DBE certification received by Non-Binding Agencies or UCP Participants shall be promptly forwarded to a UCP Representative. Any attempt by a Non-Binding Agency or UCP Participant to certify a firm as a DBE shall not be binding on any USDOT recipient within the State of Ohio. Only those certification decisions made by Ohio UCP Participants with the designated status of UCP Representative at the time the certification decision is made shall be binding on USDOT recipients within the State of Ohio.
- 4.4 **Meeting Attendance.** UCP Participants shall attend meetings and training on an as needed basis as determined by ODOT and the other UCP Representatives.
- 4.5 **Request to Change Status to UCP Representative.** A UCP Participant may request to change its status from a UCP Participant to a UCP Representative (i.e., Certifying Participant) of the Ohio UCP. A request to change status from a UCP Participant to a

UCP Representative must be submitted in writing to ODOT. The written request to change status must demonstrate the UCP Participant's commitment and ability to abide by the rights and responsibilities of UCP Representatives under this MOU and identify the individuals the UCP Participant proposes to use to perform certification responsibilities. ODOT will distribute the request to all UCP Representatives for comment and concurrence. Upon concurrence of the Ohio UCP Representatives, the UCP Participant shall execute a new Signature and Declaration of Status page as a UCP Representative.

- 4.6 **Directory.** A UCP Participant that produces, disseminates, or otherwise promotes any DBE directory other than that online DBE Directory described in Section 6 of this MOU must provide a disclaimer stating such directory is unofficial and may be inaccurate. The disclaimer must provide a hyperlink to the official DBE Directory. This disclaimer must be clearly posted.

SECTION 5: MEMBERSHIP AND RIGHTS/RESPONSIBILITIES OF THE UCP - NON-BINDING AGENCIES

- 5.1 **Participation.** All USDOT recipients must participate in a statewide UCP. Non-Binding Agency status will be given to any USDOT recipient within the State of Ohio as it relates to the UCP prior to that recipient executing the Signature and Declaration of Status page of this MOU agreeing to comply with the Terms and Conditions of this Agreement in accordance with 49 CFR Part 26 and designating its status as a UCP Representative or UCP Participant.
- 5.2 **Ratification.** All recipients of Federal funds administered by USDOT, either directly or indirectly, must ratify and comply with the Ohio UCP MOU. Failure to ratify the agreement may result in the loss of Federal funds from USDOT.
- 5.3 **Referral.** Should any firm contact a Non-Binding Agency about DBE certification, the Non-Binding Agency shall quickly refer the request to a UCP Representative. Non-Binding Agencies and UCP Participants shall not certify firms as DBEs on behalf of the Ohio UCP. Any applications for DBE certification received by Non-Binding Agencies or UCP Participants shall be promptly forwarded to a Representative of the Ohio UCP. Any attempt by a Non-Binding Agency or UCP Participant to certify a firm as a DBE shall not be binding on any USDOT recipient within the State of Ohio. Only those certification decisions made by UCP Participants with the designated status of UCP Representative at the time the certification decision is made shall be binding on USDOT recipients within the State of Ohio.

SECTION 6: DBE DIRECTORY

- 6.1 ODOT manages the Ohio Unified DBE Directory. The Ohio Unified DBE Directory is an interactive webpage populated by the certification data from AWP CRL. All certifications made by UCP Representatives are shown in the Directory.
- 6.2 The Directory shall be made available in print if requested.
- 6.3 The contents of the Directory are as follows:
 - o A listing of all firms eligible to participate as DBEs.
 - o The listing for each firm must include the address, phone number, and the types of work the firm has been certified to perform as a DBE (using the most specific NAICS code/descriptor available to describe each type of work).

SECTION 7: QUALITY ASSURANCE REVIEWS

- 7.1 UCP Representatives agree certification practices and procedures used by each UCP Representative shall be subject to monitoring and review on an triennial basis to ensure compliance with all certification standards and procedures set forth in 49 CFR Part 26 Subparts D and E and this MOU.
- 7.2 To ensure the Ohio UCP is in compliance with the application of the Federal regulations and that the highest level of quality is maintained, Quality Assurance Reviews (QARs) will be conducted by a neutral third-party consultant. ODOT will engage and pay for the consultant. The consultant will go to the UCP Representatives location to review certification records. An analysis by the consultant will be performed to determine if the certification process is taking place according to the Ohio UCP MOU and Federal regulations.

QARs include procedures and tests such as:

- o For a sample of DBE firms, determine whether each firm submitted an annual declaration in the previous year; that the annual declaration was reviewed and a correct determination of the firm's size was made; and any necessary changes to the firm's certification were made as a result (i.e., NAICS codes, or entire certification, proposed for removal).
 - o For a sample of DBE firms, contact each firm and ask if the information contained in the DBE directory is correct.
 - o Collect all available training certificates/records. For a sample of DBE/ACDBE firms certified/denied in the previous year, determine if the person who performed the review had completed the required training prior to performing the review.
 - o For a sample of DBE firms certified/denied in the previous year, determine if the forms used by the firm and the letters written by the UCP Representative correspond with the forms agreed upon in the MOU.
- 7.3 Any areas for improvement will be identified in writing and submitted to the administrator of the UCP Representative being reviewed. The UCP Representative will

be given a deadline for corrections to be made. If the UCP Representative's rights are not revoked, training may be recommended.

SECTION 8: GENERAL PROVISIONS

- 8.1 **Exhibits.** All exhibits to this MOU are incorporated herein by reference and made a part hereof.
- 8.2 **Compliance with Law.** UCP Participants agree to comply with 49 CFR Part 26 and with all other applicable Federal, State, and Local laws in carrying out the provisions of this MOU.
- 8.3 **Entire Agreement.** This MOU shall constitute the entire agreement and understanding between the UCP Participants with respect to the implementation of the Ohio UCP. This MOU shall supersede all prior agreements, written or oral, between the UCP Participants.
- 8.4 **Amendments or Modifications.** This MOU shall be binding upon the UCP Participants and may not be amended, modified, or supplemented except by an instrument in writing agreed to by the UCP Participants. Before any amendment or modification may be approved, a request for amendment or modification shall be made in writing and shall specify the requested changes and the justification for such changes. Any written request for amendment or modification shall be submitted to ODOT. ODOT shall distribute the request to UCP Participants for comment and concurrence.
- Notwithstanding the foregoing, should any provisions of 49 CFR Part 26 be changed or modified, corresponding provisions of this MOU shall be modified accordingly.
- 8.5 **Severability.** The provisions of this MOU shall be applied and interpreted in a manner consistent with one another so as to carry out the purpose and intent of the UCP Participants, but if for any reason any provision is unenforceable or invalid, such provision(s) shall be deemed severed from this MOU, and the remaining provisions shall be carried out with the same force and effect as if the severed portion had not been a part of this MOU.
- 8.6 **Assignment.** This MOU shall be binding upon and inure to the benefit of any successors or assigns of the UCP Participants.
- 8.7 **Signatures.** By executing the Signature and Declaration of Status page of this MOU, State of Ohio USDOT recipients agree to become Participants in the Ohio UCP and agree to accept the Terms and Conditions of this MOU. The executed Signature and Declaration of Status page shall be delivered to ODOT where it shall remain on file for the duration of this MOU. A copy of the executed Signature and Declaration of Status page may be delivered via facsimile or electronic mail. Each UCP Participant shall be entitled to rely upon a facsimile signature of any other UCP Participant delivered in such a manner as if such signature were an original.

The individuals executing this MOU hereby warrant they have been duly authorized to execute this MOU on behalf of their USDOT recipient in compliance with any applicable procedures, resolutions, and/or required filings pursuant to the laws governing each USDOT recipient.

Prior to executing the Signature and Declaration of Status page of this MOU, any USDOT recipient within the State of Ohio shall be regarded as a Non-Binding Agency of the Ohio UCP.



Unified Certification Program

MEMORANDUM OF UNDERSTANDING

Signature and Declaration of Status

_____ Central Ohio Transit Authority (COTA) _____ does hereby state the following:
(Name of Organization)

For All Ohio UCP Participants

- The organization is a State of Ohio USDOT recipient as defined in 49 CFR §26.5 and this MOU;
- The organization agrees to participate as a Participant in the Ohio UCP; and,
- The organization accepts the Terms and Conditions of this MOU.

For UCP Representatives Only

- The organization has a current DBE Program Plan, approved by the requisite USDOT Operating Administration, that includes provisions for DBE certification and revocation processes; and,
- The organization has the ability to abide by the rights and responsibilities of UCP Representatives prescribed by this MOU.

IN FURTHERANCE THEREOF, _Central Ohio Transit Authority (COTA)___ declares that it
(Name of Organization)

shall serve the Ohio UCP as a ___Participant_____.
(Participant or UCP Representative)

I hereby warrant that I am duly authorized to make the above statements and declaration and execute this MOU on behalf of my organization thereby binding it to the Terms and Conditions contained therein.

Authorized Signature: _____

Printed Name: _Monica S. Jones_____

Title: _Chief Equity Officer & DBE Liaison Officer _____

Date: _January 30, 2024_____

LIST OF EXHIBITS

- A. Administrative Appeal Process
- B. Annual Declaration Form
- C. Uniform Certification Application and Required Documents - DBE/ACDBE
- D. Declaration of Change Form
- E. Descriptors Listing
- F. Interstate Certification Application - DBE/ACDBE
- G. Interstate Certification Application - DBE/ACDBE - Required Documents
- H. NAICS Code/Descriptor Request Form
- I. Requested Documents Submission Form
- J. Uniform Certification Application - DBE/ACDBE - Additional Supporting Documents Form
- K. Standard Letter/Electronic Mail Templates
 - i. Annual Declaration Acknowledgement - Certification Continues Letter
 - ii. Annual Declaration Acknowledgement - Exceeds Size Standard - All Codes
 - iii. Annual Declaration Acknowledgement - Exceeds Size Standard - Certain Code(s)
 - iv. Annual Declaration Acknowledgement - Exceeds Statutory Cap
 - v. Annual Declaration Acknowledgement - Request for Additional Information Letter
 - vi. Annual Declaration Not Received - Initiate Removal Proceeding
 - vii. Application Complete and Suitable for Evaluation Email Template
 - viii. Change of Certifying Agency to ODOT
 - ix. Change of Certifying Agency to a UCP Representative other than ODOT
 - x. DBE Application - Signature Problem
 - xi. DBE Application Acknowledgement Letter - Ohio firms
 - xii. DBE Application Acknowledgement Letter - Out-of-state firms
 - xiii. DBE Application Additional Information Needed Letter (Interstate DBEs)
 - xiv. DBE Application Additional Information Needed Letter (Ohio DBEs)
 - xv. DBE Application Approval Letter
 - xvi. DBE Application Denial Letter
 - xvii. DBE Application On-Site Visit Reminder and Warning
 - xviii. Decertification - Annual Declaration Not Received - Hearing Period Lapsed
 - xix. Decertification - Exceeds Size Standard (All Codes) or Exceeds Statutory Cap - Hearing Period Lapsed
 - xx. File Request Email Template - Ohio firms seeking interstate certification
 - xxi. Interstate Certification Request - No matched codes letter
 - xxii. Interstate Certification Request - Not certified in home state
 - xxiii. Interstate Certification Request Approval Letter - All Codes Approved
 - xxiv. Interstate Certification Request Denial Letter
 - xxv. Interstate Certification Request Not Being Processed Letter - Not Certified in Home State
 - xxvi. Interstate Certification Request Not Being Processed Letter - Waiting Period Still in Effect
 - xxvii. NAICS Request Acknowledgement Letter - Ohio firms
 - xxviii. NAICS Request Approval Letter
 - xxix. NAICS Request Partial Approval/Partial Denial Letter
 - xxx. Notice of Change Acknowledgement and Request for Additional Information
 - xxxi. Proposed Finding of Ineligibility - Initiate Removal Proceeding

- xxxii. Removal of Code(s) - Hearing Period Lapsed
- xxxiii. Suspension of a DBE - Death
- xxxiv. Unable to Contact - Initiate Removal Proceeding
- xxxv. Withdrawal of a DBE Application
- xxxvi. Withdrawal of a DBE
- xxxvii. ACDBE and NAICS Request Approval Letter
- xxxviii. Decertification - Exceeds Size Standard (Certain Codes) - Hearing Period Lapsed
- xxxix. New ICR Determination of Non-approval Letter
- xl. Appeal Notice of Hearing

LIST OF USDOT RECIPIENTS IN OHIO

(Required to have a DBE Program pursuant to 49 CFR §26.21)

Federal Highway Administration

State Department of Transportation
Ohio Department of Transportation

Federal Transit Administration

Transit Agency
Allen County Regional Transit Authority
Butler County Regional Transit Authority
Central Ohio Transit Authority
City of Middletown - Middletown Transit System
Clermont County - Clermont Transportation Connection
Delaware County Transit Board - Delaware Area Transit Agency
Eastern Ohio Regional Transportation Authority
Greater Cleveland Regional Transit Authority
Greater Dayton Regional Transit Authority
Greene County Transit Board - Greene CATS Public Transit
Laketran
Lawrence County Port Authority - Lawrence County Transit
Licking County Transit Board - Licking County Transit Services
Lorain County - Lorain County Transit
Medina County - Medina County Public Transit
METRO Regional Transit Authority
Miami County - Miami County Public Transit
Mid-Ohio Regional Planning Commission
Northeast Ohio Areawide Coordinating Agency
Ohio-Kentucky-Indiana Regional Council of Governments
Portage Area Regional Transportation Authority
Richland County Transit Board - Richland County Transit
Southwest Ohio Regional Transit Authority
Springfield City Area Transit
Stark Area Regional Transit Authority
Steel Valley Regional Transit Authority
Toledo Area Regional Transit Authority
Trumbull County Transit Board - Trumbull County Transit
Warren County Transit Service
Western Reserve Transit Authority

Federal Aviation Administration

Airport Owner	Airport Name
Adams County	Alexander Salamon
Akron, City of	Akron Fulton International
Akron-Canton Regional Airport Authority	Akron-Canton Regional
Allen County	Lima Allen County
Ashland Regional Airport Authority	Ashland County
Auglaize County Airport Authority	Neil Armstrong
Bellefontaine, City of	Bellefontaine Regional
Belmont County Regional Airport Authority	Barnesville-Bradfield
Bluffton, Village of	Bluffton
Brown County	Brown County
Bucyrus, City of	Port Bucyrus-Crawford County
Butler County	Butler Co Regional-Hogan Field
Cambridge Area Regional Airport Authority	Cambridge Municipal
Carroll County Regional Airport Authority	Carroll County-Tolson
Cincinnati State Technical and Community College	Cincinnati West
Cincinnati, City of	Cincinnati Municipal Airport Lunken Field
Clermont County	Clermont County
Cleveland, City of	Burke Lakefront
Cleveland, City of	Cleveland-Hopkins International
Clinton County Regional Airport Authority	Clinton Field
Columbiana County Airport Authority	Columbiana County
Columbus Regional Airport Authority	Bolton Field
Columbus Regional Airport Authority	Port Columbus International
Columbus Regional Airport Authority	Rickenbacker International
Coshocton County Regional Airport Authority	Richard Downing
Cuyahoga County	Cuyahoga County
Darke County	Darke County
Dayton, City of	Dayton-Wright Brothers
Dayton, City of	James M Cox Dayton International
Defiance County Regional Airport Authority	Defiance Memorial
Delaware, City of	Delaware Municipal-Jim Moore Field
Erie-Ottawa Regional Airport Authority	Erie-Ottawa International
Fairfield County	Fairfield County
Fayette County	Fayette County
Findlay, City of	Findlay
Forrest A. Barber	Barber
Fostoria, City of	Fostoria Metropolitan
Fulton County	Fulton County
Galion, City of	Galion Municipal

Airport Owner	Airport Name
Gallia County	Gallia-Meigs Regional
Geauga County Airport Authority	Geauga County
Greene County Regional Airport Authority	Greene County-Lewis A Jackson Regional
Hardin County Airport Authority	Hardin County
Harrison Regional Airport Authority	Harrison County
Henry County Regional Airport Authority	Henry County
Highland County Airport Authority	Highland County
Holmes County Airport Authority	Holmes County
Huron County Airport Authority	Norwalk-Huron County
Jackson County Airport Authority	James A Rhodes
Jefferson County	Jefferson County Airpark
Kelleys Island, Village of	Kelleys Island Land Field
Kent State University	Kent State University
Knox County Airport	Knox County
Lake County Ohio Port and Economic Development Authority	Willoughby Lost Nation Municipal
Lakefield Airport Authority	Lakefield
Lawrence County	Lawrence County Airpark
Licking County Regional Airport Authority	Newark-Heath
Lorain County	Lorain County Regional
Madison County	Madison County
Mansfield, City of	Mansfield Lahm Regional
Marion, City of	Marion Municipal
Medina, City of	Medina Municipal
Miami University	Miami University
Middletown, City of	Middletown Regional/Hook Field
Monroe Airport Authority	Monroe County
Morrow County Airport Authority	Morrow County
New Philadelphia, City of	Harry Clever Field
Northeast Ohio Regional Airport	Northeast Ohio Regional
Ohio State University, The	Ohio State University
Ohio University	Ohio University
Perry County	Perry County
Pickaway County Airport Authority	Pickaway County Memorial
Pike County	Pike County
Portage County Regional Airport Authority	Portage County
Put-in-Bay Township Port Authority	Middle Bass Island
Put-in-Bay Township Port Authority	North Bass Island
Put-in-Bay Township Port Authority	Put-in-Bay
Putnam County	Putnam County

Airport Owner	Airport Name
Regional Airport Authority, Van Wert County	Van Wert County
Ross County	Ross County
Sandusky Regional Airport Authority	Sandusky County Regional
Scioto County Airport Authority	Greater Portsmouth Regional
Seneca County	Seneca County
Sidney, City of	Sidney Municipal
Skeets Airport, Inc.	Warren
Springfield, City of	Springfield-Beckley Municipal
Toledo-Lucas County Port Authority	Toledo Executive
Toledo-Lucas County Port Authority	Toledo Express
Union County Airport Authority	Union County
Urbana, City of	Grimes Field
Vinton County	Vinton County
Wadsworth, City of	Wadsworth Municipal
Warren County	Warren County/John Lane Field
Wayne County	Wayne County
Western Reserve Port Authority	Youngstown-Warren Regional
Williams Regional Airport Authority	Williams County
Wood County Regional Airport Authority	Wood County
Wyandot County	Wyandot County
Zanesville, City of	Zanesville Municipal