



**Georgia Unified Certification Program
Disadvantaged Business Enterprise
2016 Program Plan**

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SUBPART A - General Requirements

Section 26.1 Objectives

The Georgia Department of Transportation (GDOT) has established a Disadvantaged Business Enterprise (DBE) program in accordance with regulations of the U.S. Department of Transportation (DOT), 49 CFR Part 26.

The GDOT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, the Georgia Department of Transportation has signed an assurance that it will comply with 49 CFR Part 26.

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

- 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.

Section 26.3 Applicability

Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107. 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.

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.

As a recipient of Federal funds the Georgia Department of Transportation is required to administer a DBE program in compliance with all laws, regulations, Executive Orders, and guidance.

Section 26.5 Definitions

The Georgia Department of Transportation will adopt the definitions contained in Section 26.5 for this program.

1. ***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.
2. ***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.
3. ***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.*).

4. **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.
5. **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.
6. **Compliance** means that a recipient has correctly implemented the requirements of this part.
7. **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.
8. **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.
9. **Contractor** means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.
10. **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.
11. **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).
12. **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.
13. ***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.
14. ***GDOT*** means the Georgia Department of Transportation
15. ***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.
16. ***GUCP*** means the Georgia Unified Certification Program.
17. ***GUCP Certifying Partner/s*** means those other entities with an approved memorandum of understanding (MOU) to process, analyze, and certify firms as Disadvantaged Businesses.
18. ***GUCP Partner/s*** means All Georgia State federal-aid recipients, both Certifying and Non-Certifying, participating in the GUCP with a MOU.
19. ***Home state*** means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.
20. ***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.
21. ***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.
22. ***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.

23. **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.
24. **MARTA** means the Metro Atlanta Rapid Transit Authority
25. **Memorandum of Understanding or MOU** means a formal agreement between two or more parties.
26. **Native Hawaiian** means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.
27. **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.
28. **Noncompliance** means that a recipient has not correctly implemented the requirements of this part.
29. **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.
30. **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.
31. **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/>.

32. **Primary recipient** means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.
33. **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.
34. **Program** means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.
35. **Race-conscious** measure or program is one that is focused specifically on assisting only DBEs, including women owned DBEs.
36. **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.
37. **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.
38. **Secretary** means the Secretary of Transportation or his/her designee.
39. **Set-aside** means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.
40. **Small Business Administration or SBA** means the United States Small Business Administration.
41. **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.
42. **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).

43. ***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.

44. **Spouse** means a married person, including a person in a domestic partnership or a civil union recognized under State law.
45. **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 manufacturer
46. **Tribally-owned concern** means any concern at least 51 percent owned by an Indian tribe as defined in this section.
47. **You** refers to Georgia Department of Transportation, unless a statement in the text of this part or the context requires otherwise (i.e., ‘You must do XYZ’ means that Georgia Department of Transportation must do XYZ).

Section 26.7 Non-discrimination Requirements

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

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

Section 26.11 Record Keeping Requirements

- a) The GDOT transmits the Uniform Report of DBE Awards or Commitments and Payments, for the first half of fiscal year and second half of fiscal year by the due dates and in the format included in 49 CFR Part 26, Attachment 1 to this part.

- b) The GDOT provides data about the DBE program to the Department as directed by DOT operating administrations.
- c) The GDOT has a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on DOT-assisted contracts. The purpose of this requirement is to allow use of the bidders' list approach to calculating overall goals. The bidders list includes
 - i. the name,
 - ii. address, and
 - iii. DBE non-DBE status.

The GDOT collects this information from all prime bidders of all firms who quote to them on subcontracts.

- d) The GUCP certifying partner/s maintains records documenting a firm's compliance with the requirements of this part. The GUCP certifying partner/s keep a complete application package for each certified firm and all affidavits of no-change, change notices, and onsite reviews. These records are retained indefinitely. Other certification or compliance related records are retained for a minimum of three (3) years. The confidentiality of the information is secured through very limited access. Building and floor access is limited to current employees and registered visitors. The records are further filed and stored in locked cabinets. Access to the cabinets is limited to employees performing the firm's certification analysis.
- e) As requested under the Fast Act, or current authorizing legislation, the GDOT commits to providing the following information to the Department of Transportation's Office of Civil Rights by January 1st of each year: the DBE UCP information related to the percentage and location in the State of certified DBE firms in the UCP Directory controlled by 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 26.13 Federal Financial Assistance Agreement

The GDOT has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

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

- b) The following language will appear in financial assistance agreements with sub-recipients and in every contract and each subcontract the Prime signs with a subcontractor, word-for-word.

“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”.

A Contractor’s failure to comply with any provision of the DBE regulations will be considered a material contract breach. In the event of a material breach, the GDOT may withhold progress payments, withhold final payment, assess liquidated damages, termination of the contract, suspension / debarment or disqualifying the contractor from future bidding as non-responsible.

Liquidated Damages for a Lack of GFE Determination

Any shortfall that was not addressed through corrective actions by the Prime Contractor at the time the occurrence was realized, or should have been realized, may be an automatic overall “lack of good faith effort” determination and subject to liquidated damages.

The Department shall have the contract payments reduced as a liquidated damage and not as a penalty, by an amount according to the following schedule:

1. For the first \$1,000 DBE deficiency, one hundred percent (100%) of the deficiency.
2. For the next \$9,000 DBE deficiency, fifty percent (50%) of the deficiency.
3. For the next \$10,000 DBE deficiency, twenty five percent (25%) of the deficiency.
4. For any remaining DBE deficiency, ten percent (10%) of the deficiency.

This liquidated damage provision shall not be applicable where actual payment to a DBE is within ninety percent (90%) of the commitment, or where there are good and sufficient reasons, properly documented, for the deficiency such as quantity under-runs, project changes, etc.

If a contractor finds it impossible, for reasons beyond his control, to meet the intended DBE participation stated on the contract commitment plan, he may at any time prior to completion of the project provide a written request to the DBE Office for a complete or partial waiver of liquidated damages. Any request for a waiver will not be accepted after completion the project.

SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 DBE Program Updates

The GDOT will continue to carry out this program until all funds from DOT financial assistance have been expended. GDOT provides updates to DOT representing significant changes in the program. The GDOT DBE plan will be updated and approved by FHWA when there have been significant changes to the current approved plan. All subrecipients of FHWA funds will comply with the GDOT's DBE Plan and may not have a plan independent from the GDOT's.

Section 26.23 Policy Statement

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

Kimberly A. King, Equal Employment Opportunity Director, is delegated as the DBE Liaison Officer. In her capacity as EEO Director, she is responsible for implementing all aspects of the DBE program. Implementation of the DBE program is accorded the same priority as compliance with all other legal obligations incurred by the Georgia Department of Transportation in its financial assistance agreements with the Department of Transportation.

Georgia Department of Transportation has disseminated this policy statement to the State Transportation Board and all of the components of our organization. We have distributed this statement electronically to DBE and non-DBE business communities that perform work for us on DOT assisted contracts.


Commissioner


Date

Section 26.25 DBE Liaison Officer (DBELO)

We have designated the following individual as our DBE Liaison Officer:

- Kimberly A. King, Director of EEO
600 West Peachtree Street, N.W.
One Georgia Center, 7th Floor
Atlanta, Ga. 30308
(404) 631-1972
kiking@dot.ga.gov

the DBELO is responsible for implementing all aspects of the DBE program and ensuring that the GDOT complies with all provision of 49 CFR Part 26. The DBELO has direct, independent access to the Commissioner concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in Attachment 2 to this program.

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The DBELO has a staff of 21 to assist in the administration of the program. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by DOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.
4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment and identifies ways to improve progress.
6. Analyzes GDOT's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Commissioner and Transportation Board on DBE matters and achievement.
9. Chairs the DBE Advisory Committee.
10. Participates in pre-bid meetings.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in Georgia

14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the GUCP updated directory on certified DBEs

Section 26.27 DBE Financial Institutions

It is the policy of the GDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions.

To date we have identified the following such institutions:

Capital City Bank and Trust Company

Atlanta, GA

Citizens Trust Bank

Atlanta, GA

Quantum National Bank

Suwanee, GA

State Bank of Georgia

Fayetteville, GA

First Continental Bank

Atlanta, Duluth, Suwanee GA

Metro City Bank

Doraville, Duluth GA

Noa Bank

Duluth, Atlanta, Johns Creek GA

Touchmark Bank

Alpharetta GA

Section 26.29 Prompt Payment Mechanisms (Attachment 16)

a) The GDOT includes the following Special Provision in all contracts:

- Prime Contractors, who sublet a portion of their work, shall pay their subcontractors for satisfactory performance of their contracts no later than 10 calendar days from receipt of each payment made to them. Any delay or postponement of payment among the parties may take place only for good cause with prior written approval from the Department. If the contractor is found to be in noncompliance with these provisions, it shall constitute a breach of contract and further payments for any work performed may be withheld until corrective action is taken. If corrective action is not taken, it may result in termination of the contract.

All subcontract agreements shall contain this requirement.

b) The GDOT declined to hold retainage from prime contractors and prohibits prime contractors from holding retainage from subcontractors.

- 2013 Georgia Standard Specification 109.07 H. states, “Insert the Following in Each Subcontract .The Contractor shall insert the following in each Subcontract entered into for work under this Contract: *‘The Contractor shall not withhold any retainage on Subcontractors. The Contractor shall pay the Subcontractor 100% percent of the gross value of the Completed Work by the Subcontractor as indicated by the current estimate certified by the Engineer for payment.’* Neither the inclusion of this Specification in the Contract between the Department and the Prime Contractor nor the inclusion of the provisions of this Specification in any Contract between the Prime Contractor and any of his Subcontractors nor any other Specification or Provision in the Contract between the Department and the Prime Contractor shall create, or be deemed to create, any relationship, contractual or otherwise, between the Department and any Subcontractor”.

c) To determine acceptance of prompt payment and substantial completion, the GDOT includes the following DBE Special Provision, Criteria For Acceptability (Attachment 14) in all contracts funded through FHWA:

- The Prime Contractor shall submit documentation regarding all payments made from the Prime to all DBE subcontractors on federal aid projects in the form of copies of cancelled checks or notarized electronic documentation which validates said payments made on the DBE Monthly Participation Reports. This information shall be required monthly and submitted with the DBE Monthly Participation Report. Failure to respond within the time allowed in the request will be grounds for withholding all payments on all Contracts.

- d) The GDOT affirmatively monitors and enforces prompt payment and return of retainage requirements through monthly documented Audits of project records performed on all GDOT let FHWA funded projects.
- e) Additional mechanisms the GDOT uses to ensure prompt payment, include providing the payment and performance bond information of the Prime Contractor to the party due payment. The GDOT provides the surety's name, address, and telephone number with guidance to timely file the complaint to avoid relinquishing the right to file the claim.

Section 26.31 Directory

The GDOT maintains a directory identifying all firms eligible to participate as DBEs. The directory lists the firm's name, address, phone number, date of the most recent certification, and the type of work the firm has been certified to perform as a DBE. We revise the Directory immediately after a change to the firm's information is reported, reviewed, and approved. We make the Directory available electronically at

- <http://www.dot.ga.gov/PS/Business/DBE>

A web screen-shot of the Directory may be found in Attachment 3 to this program document.

Section 26.33 Overconcentration

The GDOT has identified that overconcentration exists in the hauling industry. The GDOT determined that DBE firms are so significantly over-concentrated in the trucking area of work, that they unduly burden the opportunity of non-DBE firms to participate in this type of work. The presence of overconcentration in trucking in the Georgia Department of Transportation DBE Program was established in the 2012 Disparity Study which was forwarded to the OA for consultation. The issue was again reviewed in a 2015 Small Business Study and the 2015 Disparity Study. Further analysis of the DBE trucking participation indicates DBE hauling accounted for 81% of the DBE construction achievements from January 1, 2015 to December 31, 2015.

The Georgia Department of Transportation has instituted the following measures to address the overconcentration, while encouraging DBE diversity in project participation:

- 1) Enable rule (49 CFR 26.55), One for One counting of DBE Hauling to address the effects of over-concentration. The DBE may 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.

- 2) Create a rule to vary the use of contract goals, to the extent consistent with §26.51. There is a continuing concern in the program that if Prime Contractors are able to meet DBE goals readily by doing nothing more than obtaining DBE participation through trucking firms, the Prime Contractors will be less likely to hire DBE subcontractors for other purposes. The Department's contract goals must provide for participation by all certified DBEs, and must not be subdivided into group-specific goals. Therefore, to encourage Prime Contractors to diversify the work categories subcontracted to DBE firms, the Georgia DOT proposes to credit or count trucking / hauling toward the DBE goal at reduced percentages. The percentage allowed would be established in increments. Fiscal year 2017 would be 80%, fiscal year 2018 would be 70%, and fiscal year 2019 would be 60%.
- 3) Enable use of Joint-checks for material purchases in the DBE Program through a Joint Check Approval policy. To further encourage Prime Contractor's to do business with other firms beyond Trucking, the Department wishes to permit the use of joint checks toward meeting the Contract DBE Goals. A joint-check is a check issued by a prime contractor to a DBE subcontractor and to a material supplier or another third party for items or services to be incorporated into a project. Whereas, the DBE rule does not prohibit prime contractors and subcontractors from using joint checks, and whereas, this practice is a commonly-recognized way of doing business, the State of Georgia Standard Specifications, Construction of Transportation Systems, Section 108.01 Subletting of Contract, provides for the purchase of materials by the Prime Contractor for use by a Subcontractor. The Department will require prime contractors and DBEs wishing to use joint-check arrangements to obtain prior approval from the Georgia DOT. Prior to approval, a written joint-check agreement among the parties (including the suppliers concerned) providing full and prompt disclosure of the expected use of joint checks will be required. The prime contractor will not be allowed to make payment directly to the supplier. The DBE will release the check to the supplier. Current Georgia DOT standard operating procedures have a well-established monitoring Commercial Useful Function inspection process having oversight mechanisms such as review of invoices, and cancelled checks.

Section 26.35 Business Development Programs (BDP)

As part of the Department's DBE Supportive Service Contract, the BDP is for an anticipated term of 2 years; however, the term may be modified based on Program progress.

The DBE Supportive Service Vender (DBESSV) uses a simple application to screen potential participants to find those companies who have the potential for success in the proposed BDP. The goal is not to accept only well-established successful businesses; however, success in contracting requires some basic infrastructure. The purpose of the application is to uncover whether or not the proposed participant has the underlying infrastructure necessary to find opportunities, write proposals, win contracts and successfully perform.

Once accepted into the BDP, the participant has sixty (60) days to submit a business plan (table of contents attached). Once the plan is submitted, our staff will schedule a review of the plan with the participant and review the program details.

The business development program has both the developmental and transitional stages as required by 49 CFR 26 Appendix C (G). Our developmental stage will consist of twenty-six (26) weeks of training (curriculum attached) and an exam that will certify the participant as a Certified Government Contracting Professional (CFCP). After formal training, the developmental stage continues with technical support, coaching, and strategic planning sessions to monitor progress toward their business plan goals and objectives.

In addition, the participant is provided a mentor – an experienced government contractor. The mentor firm is there to help the participant avoid costly “rookie contractor” mistakes. Certification Consultants and the mentor firm will work with the participant until they win their first contract. Once the participant wins that first contract, they will move to the transitional stage of the program.

Upon entering the transitional stage of the program, in accordance with 49 CFR 26 Appendix C (I) the participant has sixty (60) days to submit a transition management plan that states the participant's growth goals beyond DBE contracts. During the transitional stage of the program, we will be teaching the participants best practices for contract management and compliance and how to create an internal team to support future growth. Certification Consultants will meet with the participant quarterly to evaluate the progress toward the goals and objectives of their transition management plan.

Once the participant meets the goals and objectives as outlined in their transition management plan, the participant is graduated from the BDP. Participants in the program receive a letter notifying them of our intention to graduate them from the program. As per the code, the participant will have 45 days from the date of the letter to dispute the findings if they feel graduation is not warranted. Graduates from the program are eligible to mentor other program participants if they desire to contribute to the BDP beyond graduation.

Section 26.37 Monitoring and Enforcement Mechanisms

- a) As part of normal business practices, GDOT uses monthly monitoring reporting mechanisms to monitor worksites.

The Monitoring and inspection requirements of Sub-recipients are detailed in the [Local Administered Project \(LAP\) Manual](#). The purpose of the Local Administered Project Manual is to establish uniform practices for authorizing qualified Local Public Agencies (LPA) to manage certain core activities for Federal-aid funded projects. Under Title 23 U.S.C. the State Transportation Agencies are responsible for the administration of Federal-aid transportation projects. Title 23 U.S.C. does not recognize local entities as direct recipients of Federal-aid funds. Georgia Department of Transportation (GDOT) assumes the responsibilities of the Secretary of Transportation for all Federal-aid projects. GDOT stewardship includes the responsibility to assure local projects meet or exceed all applicable Federal and State laws, standards and requirements.

- b) The GDOT takes the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

The Office of Bidding Administration Collaborates with the Equal Employment Opportunity Office in recommending project DBE goals and analyzing DBE Commitments list prior to award of contracts, and maintains a bidders' list of DBE firms to be used on project(s).

The Office of Construction reviews contract requirements for DBE goals; monitors use of DBE firms on project during construction inspections, reviews use of DBE firms on projects during monthly audit of project records and notifies Project Engineer of violations.

The District Construction Office is chiefly responsible for the administration of the DBE program for projects under construction within the District; set up appropriate procedures acting directly or through the Area Engineer to ensure that the Contractor meets DBE requirements in each Contract; monitors DBEs approved to perform work on the project in the Contract and on the Awards List distributed by the Office of Bidding Administration; verify that DBE firms working are approved to work on the project and that DOT Form 485 (Request for Approval of Subcontract) has been submitted by the Prime Contractor and approved by the Department, and ensure that the DBE Participation Reports are submitted monthly by the Prime Contractor showing all DBE information.

The GDOT District Construction Project Engineer reviews the monthly DBE reports, cancelled checks, subcontract agreements, invoices, and performs “Commercially Useful Function” inspections on every DBE firm approved to work on the project.

The District EEO Officers are employees of the Office of EEO. They provide training and guidance to the Area Project personnel. The District EEO Officers review sub-recipients records and provide training on identified weaknesses. See Attachment 4.

The District Consultant Compliance Officers are consultants for the Office of EEO. They perform monthly audits of project contract records related to federal EEO regulations, including but not limited to monthly DBE reports, cancelled checks, CUF inspections, subcontracts, payrolls, and invoices on projects Let/ Awarded by GDOT. See Attachment 5. Audit findings are reported to the Office of EEO, District Construction Engineer, Area Engineer, and Project Engineer. The audit reports are filed in the Official Project records and in the GDOT EEO internal SharePoint webpage.

The General Office-Compliance Officers perform close-out reviews of the Contract DBE reports, and assess Good Faith Efforts in meeting the project DBE Goal.

- c) The GDOT's DBE Special Provision, “Criteria For Acceptability” that is included in all contracts funded by FHWA, and the monthly DBE report are designed to provide a running tally of actual payments made to the DBE firms, including a means of comparing utilization to commitments.

The Monthly “DBE Participation Report” includes the following information:

1. The name of each DBE participating in the contract.
2. A description of the work to be performed, materials, supplies, and service provided by each DBE.
3. Whether each DBE is a supplier, subcontractor, owner/operator, or other.
4. The dollar value of each DBE subcontract or supply agreement.
5. The actual payment to date of each DBE participating in the contract.
6. The report shall be updated by the Prime Contractor whenever the approved DBE has performed a portion of the work that has been designated for the contract. Copies of this report should be transmitted promptly to the Engineer. Failure to submit the report within 30 calendar days following the end of the month may cause payment to the contractor to be withheld.
7. The Prime Contractor shall notify the Project Engineer at least 24 hours prior to the time the DBE commences working on the project. The DBE must furnish

supervision of the DBE portion of the work, and the person responsible for this supervision must report to the Project Engineer when they begin work on the project. They must also inform the Project Engineer when their forces will be doing work on the project.

Contracts funded through FHWA are considered Race Conscious contracts if they have a DBE goal requirement. A race conscious contract includes a list of DBE firms the Prime Contractor has committed to perform work. Any changes to the list must be approved by the Engineer prior to replacement or substitution of a committed DBE. Any additional DBE firms added after award of the contract, are recognized as Race Neutral in the GDOT data systems (AASHTO-ware Transport SiteManager and CRLMS), and the DBE Monthly report (except those firms approved as a substitution for a Race Conscious firm). All Prime Contracts awarded to a DBE firm, and Contracts let with a Zero (0) goal are considered and recorded as Race Neutral. When the Prime Contractor is a DBE, the DBE participation toward the goal is determined by deducting all subcontract amounts from the Prime Contract amount.

Section 26.39 Fostering Small Business Participation

- 1) The Small Business Program is governed by the Georgia Department of Transportation and administered by the department's Equal Employment Opportunity Office (EEO).
- 2) The objective of the Small Business Program is to promote opportunities for eligible small business through the department's procurement of materials and professional and technical services, as well as transportation consultant and construction contracts.
- 3) The program will facilitate procurement and prime and subcontract opportunities of a size and scope that can reasonably be performed by competing small businesses including Disadvantaged Business Enterprises (DBEs).
- 4) The EEO will collaborate with the various GDOT departments to ensure maximum outreach and SBE participation which will include:
 - a) Provide access to Orientation sessions on "How To Do Business with GDOT" for newly registered small businesses,
 - b) Provide electronic messages regarding business opportunities to registered small businesses,

- c) Conduct training sessions on various topics, featuring other departments, to include:
 - 1. Construction
 - 2. Bidding Administration
 - 3. Information Technology
 - 4. Consultant Services
 - 5. Program Delivery
 - 6. Planning Department
 - 7. Procurement Services

 - 5) Additional information regarding the Small Business Program is available at <http://www.dot.ga.gov/PS/Business/SBP>

 - 6) Rules governing administration of the Small Business Program can be found in Attachment 6 .
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SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.43 Set-Asides or Quotas

The GDOT does not to use quotas for DBEs on DOT-assisted contracts subject to this part.

Section 26.45 Overall Goals

GDOT reviews and sets overall goals on a three-year cycle established by FHWA in accordance with 49 CFR Part 26.45 and submits the overall goal to FHWA by August 1st at the designated three year intervals.

GDOT's methodology follows the two-step process outlined in Part 26.45 (c) (5). The first step is to determine the relative availability of ready, willing and able DBEs in the market area, which is the "base figure". The second step is to adjust the "base figure" percentage from Step 1 so that it reflects as accurately as possible the DBE participation we would expect in the absence of discrimination based on past participation, the disparity study, and/or information about barriers to entry to past competitiveness on DBE projects.

In establishing the overall goal, GDOT will consult with minority, women's and general contractor groups, community organizations, and other officials or organizations to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and GDOT's efforts to establish a level playing field for the participation of DBEs.

GDOT's overall goal is based on evidence of the availability of ready, willing and able DBEs relative to all businesses that are ready, willing and able to participate on GDOT's federally-assisted contracts. The goal method reflects GDOT's determination of the level of DBE participation it would expect absent the effects of discrimination. Included in this methodology are the general recommendations on goal development from the DBE Rule 49 CFR Part 26.45 and U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization.

When submitting its overall goal for review, GDOT will include a description of the methodology it used to establish the goal, include the base figure and the evidence with which it was calculated, and any adjustments made to the base figure with the evidence relied on for the adjustments. GDOT will include a projection of the portions of the overall goal it expects to meet through race-neutral, and as necessary, race-conscious measures.

The GDOT is not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that GDOT's overall goal has not been correctly calculated or the method for calculating goals is inadequate, the operating administration may, after consulting with GDOT, adjust the overall goal. The adjusted overall goal is binding.

When establishing an overall goal, GDOT will provide for public participation. GDOT publishes a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Equal Employment Opportunity Office for thirty days following the date of the notice, and informing the public that GDOT will accept comments on the goals for forty-five days from the date of the notice. A notice will be issued in general circulation media and available minority focused media. Normally, notices will be issued by June 15th of each goal year. The notice will include addresses to which comments may be sent and addresses where the proposal may be reviewed. GDOT will begin the overall goal on October 1st of each goal year to provide time for document and language corrections. GDOT's Goal and Methodology supporting its current goal is provided in Attachment 8.

Section 26.47 Shortfall Analysis

- a) The GDOT cannot be penalized, or treated by the Department as being in noncompliance with this rule, because its DBE participation falls short of the overall goal, unless the GDOT has failed to administer its Program in good faith.
- b) If GDOT does not have an approved DBE program or overall goal, or if it fails to implement the Program in good faith, the Agency is in noncompliance with this part.
- c) If the awards and commitments shown on the GDOT's Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the GDOT will:

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

1. Establish specific steps and milestones to correct the problems identified in the Agency analysis and ensure the ability to fully meet the goal for the new fiscal year;
2. The GDOT within 90 days of the end of the fiscal year, will submit the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to FHWA for approval.

3. If GDOT's Uniform Report of DBE Awards or Commitments and Payments or other information demonstrates that current trends make it unlikely that GDOT will achieve DBE awards and commitments that would be necessary to allow it to meet its overall goal at the end of the fiscal year, GDOT may be required to make further good faith efforts, such as by modifying its race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the year.
 4. FHWA may impose conditions on the GDOT as part of its approval of the GDOT's analysis and corrective actions including, but not limited to, modifications to the overall goal methodology, changes in the race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.
 5. The GDOT 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 the DBE program in good faith if any of the following things occur:
 - i. GDOT does not submit an analysis and corrective actions to FHWA in a timely manner as required under paragraph (c)(3) of this section;
 - ii. FHWA disapproves the GDOT analysis or corrective actions; or
 - iii. The GDOT does not fully implement the corrective actions to which it has committed or conditions that FHWA has imposed following review of the analysis and corrective actions.
- d) If, GDOT's Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FHWA demonstrates that current trends make it unlikely that GDOT will achieve DBE awards and commitments that would be necessary to allow it to meet the overall goal at the end of the fiscal year, FHWA as applicable, may require GDOT to make further good faith efforts, such as by modifying the race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

Section 26.51 Contract Goals

- a) GDOT strives to meet the maximum feasible portion of the 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; 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);
 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 the 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 the GDOT submits an overall goal for review by the concerned operating administration, GDOT also submits a projection of the portion of the goal that is expected to be met through race-neutral means and the basis for that projection. This

projection is subject to approval by the concerned operating administration, in conjunction with its review of the overall goal.

Section 26.51 (d-g) Contract Goals

- d) The GDOT establishes contract goals to meet any portion of the overall goal that is not projected being meet using race-neutral means.

- e) The following provisions apply to the use of contract goals:
 - 1. The GDOT will use contract goals on those federally-assisted contracts that have subcontracting possibilities.
 - 2. The GDOT will not set a contract goal on every federally-assisted contract. GDOT will not set each contract goal at the same percentage level as the overall goals. 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.
 - 3. Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal GDOT establishes.
 - 4. The GDOT contract goal provide for participation by all certified DBEs and is not subdivided into group specific goals. The GDOT expresses its race conscious goals as a percentage of the engineer's overall estimate for the contract. As established in the GDOT policy, "8201-1 Disadvantaged Business Enterprise (DBE) Goal Evaluation. Attachment 8.

The process establishes Local Market Areas, which are based upon the Georgia Regional Commissions' designation of geographic areas of the state into specific regions. The Local Markets are the geographical areas chosen by the contractors and subcontractors as the general locations in which they are willing to work. The formula considers an Availability Factor of the ready, willing, and able DBEs and non DBEs that are currently registered and/or prequalified to do work with GDOT within the defined Work Codes and Local Market.

The Director of EEO provides the contract proposed DBE goals to the DBE Goal Review Committee, made up of an EEO representative, Director of Construction, Chief Engineer, Director of Engineering, Director of Operations

& Permits, Deputy Commissioner and other members as appointed by the Deputy Commissioner. The Goal Setting Committee meets prior to each letting and review the proposed goal. The Goal Setting Committee accepts or modifies the proposed goal as appropriate.

- f) Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures, is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award (e.g., a prime contractor that uses a strict low bid system to award subcontracts).

- g) The race-neutral means that GDOT may use include, but may not be limited to the following:
 - 1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other businesses participation,
 - 2. Encouraging prime contractors to subcontract portions of the work that they might otherwise perform with their own forces,
 - 3. 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,
 - 4. Ensuring distribution of the GEOT's DBE directory, through print and electronic means, to the widest feasible universe of potential contractors, and
 - 5. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

- h) If GDOT's DBE participation goals are exceeded for two consecutive years, GDOT will make adjustments using race-neutral contract goals to meet overall goals in the following year.

- i) If GDOT obtains DBE participation that exceeds its overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), it will reduce its use of contract goals proportionately in the following year. In any year in which GDOT projects meeting part of its goal through race-neutral means and the remainder through contract goals, GDOT will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. GDOT will report this data to the concerned operating administration. The DBE Goal

Setting Committee meets monthly to discuss and finalize setting Contract DBE goals in accordance with the appropriate regulations and Department policies.

The GDOT will not use set-asides, preferences, or quotas for DBEs on federally-assisted contracts subject to this part. GDOT currently uses both race conscious and race-neutral methods to achieve the established goals.

Section 26.53 (a) (b) Good Faith Efforts Procedures

- a) When there is an established DBE contract goal, the GDOT awards the contract only to a bidder/offeror that makes good faith efforts to meet it. On all federal-aid contracts, the GDOT determines 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, GDOT does not deny award of the contract on the basis that the bidder/offeror failed to meet the goal.

The GDOT Standard Specification 102.07 Rejection of Proposals H. Failure to List Disadvantaged Business Enterprise (DBE) Participants requires on low bid contracts:

“If the contract has an established DBE goal, the Department reserves the right to reject and disqualify any proposal if the bidder has failed to list bona fide DBE participants with sufficient participation to achieve at least the established goal. The Department may consider for award a proposal with less participation than the established goal if both:

1. *The bidder can demonstrate that no greater participation could be obtained and;*
 2. *The participation proposed by the low bidder is not substantially less than the participation proposed by the other bidders on the same contract.”*
- b) In the GDOT solicitations for DOT-assisted contracts for which a contract goal has been established, GDOT requires 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 must be demonstrated. 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.

As stipulated in USDOT DBE Final rule RIN: 2105-AE08, the normal process for setting contract goals does not fit the contract award process well on design-build projects. At the time of the award of the master contract, neither the recipient nor the master contractor may know in detail what the project will look like or exactly what contracting opportunities there will be, let alone the identity of DBEs who may subsequently be involved. In these situations, the GDOT may alter the normal process, setting a project goal to which the master contractor commits. Later, when the master contractor is letting subcontracts, it will set contract goals as appropriate, standing in the shoes of the GDOT. The GDOT will exercise oversight of this process.

Section 26.53 (c) Good Faith Efforts

GDOT ensures all information is complete, accurate and adequately documents the bidder's good faith efforts before committing itself to the performance of the contract by the bidder. The bidder must present to the Office of Bidding Administration the information required by the close of business on the third working day following opening of the bid as a matter of bidder responsibility. [The evaluation of Good Faith Efforts is performed by a committee in identified in the GDOT policy, "8201-1 Disadvantaged Business Enterprise \(DBE\) Goal Evaluation. Attachment 8.](#)

A determination of good faith efforts includes the following:

- (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 does document adequate good faith efforts, GDOT will not deny award of the contract on the basis that the bidder failed to meet the goal. In its solicitations for federally-assisted contracts for which a contract goal has been established, GDOT will require specific information. Award of the contract will be conditioned on meeting the requirements of this section;

Section 26.53 (d) Good Faith Efforts

If GDOT determines that the apparent successful bidder has failed to meet all applicable requirements, it will, before awarding the contract, contact the bidder by certified mail and provide the bidder with an opportunity to request an administrative reconsideration. **ANY REQUESTS FOR ADMINISTRATIVE RECONSIDERATION MUST BE RECEIVED WITHIN TEN (10) BUSINESS DAYS OF GDOT'S LETTER** and must be sent to the Deputy Commissioner, One Georgia Center, 600 W. Peachtree Street, N.W., Atlanta, Georgia 30308.

- (1) As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.
- (2) GDOT's decision on reconsideration will be made by an official or officials who did not take part in the original determination that the bidder failed to meet the goal or make adequate good faith efforts to do so.
- (3) The bidder will have the opportunity to meet in person with GDOT's reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

- (4) The evidence presented during the administrative reconsideration hearing will be reviewed. The GDOT official(s) may consider newly admitted evidence when determining whether the bidder met the requirements of paragraph (a).
- (5) The GDOT official(s) will send the bidder 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.
- (6) The result of the reconsideration process is final and is not administratively appealable to the United States Department of Transportation.

Section 26.53 (f) Termination, Substitution of DBE

1. (i) The GDOT requires 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 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) the GDOT includes 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. If the Contractor desires to substitute a DBE in lieu of those listed in the proposal, a letter of concurrence is required from the listed DBE prior to approval, unless the requirement is waived by the Department. Approval must be granted prior to substituting the DBE identified in the proposal and extends to work that a prime contractor can perform with its own forces, or with a non-DBE, or another DBE firm. As stipulated in USDOT DBE Final rule RIN: 2105-AE08, the restrictions on terminating and replacing a DBE selected by a bidder or offeror to meet a contract goal are intended to hold the contractor to the good faith efforts commitment made to win the contract. No comparable commitment is made when DBE contract goals are not

set. No distinction is made between DBEs and non-DBEs when race-neutral measures are used to obtain participation.

The GDOT District Engineer may approve the request and send a copy to the Office of EEO. A simple letter from the Prime stating they could not get the DBE to perform will not be accepted as documented evidence that a good faith effort was made. Substitutions of DBEs will only be allowed if acceptable documentation is provided. The Contractor's request for substitution must have supporting documentation with reasons for the substitution.

Contractors requesting termination must first notify the DBE in writing of the intent to terminate and allow the DBE five (5) days to present objections. However, the prime contractor must have good cause for terminating the DBE firm. A showing of good cause for termination includes:

- i. The DBE fails or refuses to execute a written contract,
- ii. The DBE fails or refuses to perform the work consistent with normal industry standards,
- iii. The DBE fails or refuses to meet the prime contractor's non-discriminatory bond requirements,
- iv. The DBE becomes bankrupt or has credit unworthiness,
- v. The DBE is ineligible to work because of suspension and debarment,
- vi. It has been determined that the DBE is not a responsible contractor,
- vii. The DBE voluntarily withdraws from the contract, with written notification,
- viii. The DBE is ineligible to receive credit for the type of work required,
- ix. The DBE owner dies or becomes disabled resulting in the inability to perform the work on the contract,
- x. Any other documented, compelling reason.

Section 26.53 (g) Good Faith Efforts to Replace

The GDOT also has a Good Faith Effort requirement when a DBE is replaced on a contract. The GDOT requires a contractor to make good faith efforts to replace a DBE that is terminated or otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. GDOT requires the prime contractor to notify the Project Engineer immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, GDOT will require the prime contractor to obtain GDOT's approval prior to the substitution of the DBE and to provide copies of the new or amended subcontracts, or documentation of good faith effort(s).

- A. A prime contractor is prohibited from terminating for convenience a DBE subcontractor listed in response to DBE substitutions of this DBE Program Plan and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without GDOT's prior written consent.
- B. When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, a prime contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE.
- C. 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 GDOT established for the procurement.
- D. Administrative remedies will result when a contractor fails to comply with the requirements of this section.
- E. A DBE shortfall is defined as a failure of the contractor to meet the DBE goals as established in the Contract. The GDOT does not allow the transfer of DBE shortfalls. The EEO Office will have the final determination on shortfalls. If a shortfall occurs on a project, the Contractor shall submit correspondence to the Project Engineer providing the circumstances that led to the shortfall and their attempts to fulfill the goal. They must provide documentation that they have made a good faith effort. The Project Engineer shall review the correspondence and forward to the District Construction Office with information as to why the shortfall should or should not be accepted. The District Construction Engineer shall then review and make any additional comments before forwarding to EEO in the General Office for the final.

Section 26.53 (h)

The GDOT includes 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 as deemed appropriate if the prime contractor fails to comply with the requirements of this section.

Section 26.53 (i) DBE is prime contractor

All Prime Contracts awarded to a DBE firm are considered and recorded Race Neutral. The GDOT counts the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

Section 26.53 (j) GFE- All contracts/ subcontracts must comply

The GDOT requires the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts, and/ or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with the provisions. The restrictions on terminating and replacing a DBE selected by a bidder or offeror to meet a contract goal are intended to hold the contractor to the good faith efforts commitment made to win the contract. No comparable commitment is made when DBE contract goals are not set. No distinction is made between DBEs and non-DBEs when race-neutral measures are used to obtain participation.

Section 26.55 (a) Commercially Useful Function

When a DBE participates in a contract, as a subcontractor, transaction facilitator, professional service provider, hauler, manufacturer, regular dealer, or regular dealer of bulk items, the Contractor may count the entire expenditure for actual work performed by any approved DBE firm, including supplies purchased or equipment leased by the DBE for the work of the contract, (Except a DBE and its prime contractor may not count toward goals items that the DBE purchases or leases from its own prime contractor), only if the DBE is performing a commercially useful function on that contract. Commercially Useful Function is evaluated on a “contract by contract” basis.

To receive credit with respect to obtaining materials and supplies a DBE contractor must “be responsible for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself”. Only when a DBE meets all requirements may goal credit be counted for the procurement of items by the DBE.

Pursuant to the Joint Check Policy & Procedures in Attachment 9, the Georgia Department of Transportation monitors the use of joint checks when the Prime Contractor is making efforts to assist interested DBEs when credit has been denied to the DBE firm from a Merchant in obtaining the necessary equipment, supplies, materials, or related assistance or services. If the proper procedures are not followed or the department determines that the arrangement results in a lack of independence for the DBE involved, no goal credit for the DBE’s participation as it relates to the material cost will be used toward the contract goal requirement and the prime may be held responsible for not meeting this goal.

- 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.

Section 26.55 (b) Joint Ventures

When a DBE performs as a participant in a joint venture, the GDOT counts 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.

Section 26.55 (c) DBE Credit

The GDOT counts 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) The Departments decisions on commercially useful function (CUF) matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

It is the primary responsibility of the prime contractor to ensure that the DBE is performing a CUF. GDOT, as the contracting agency, has oversight responsibility to ensure that the prime contractor has effectively met this responsibility under its contract with the Department.

The GDOT Project Engineer documents a minimum of one CUF review for each DBE on each project with a DBE goal, Attachment 10. The completed form is filed in the official project records with the applicable DBE report, and the GDOT project personnel continues to monitor compliance through the course of the project. This duty is delegated to sub-recipients on locally sponsored projects.

When a DBE is presumed not to be performing a commercially useful function the DBE may present evidence to rebut this presumption. The GDOT may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

The GDOT decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

Section 26.55 (d) Trucking

The Contractor may apply credit or counts trucking / hauling toward the DBE goal at reduced percentages when the DBE performs a commercially useful function. The percentage allowed is

established in increments. Fiscal year 2016 are 100%, 2017 is 80%, fiscal year 2018 would be 70%, and fiscal year 2019 would be 60%.

The GDOT uses 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.
- 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.
- 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.

The Prime Contractor is required to maintain a hauling plan and make the plans available for review by the GDOT at any time with reasonable notice.

Section 26.55 (e) Materials and Supply credits

The GDOT counts 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) 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) The GDOT determines 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).

Section 26.55 (f) Not Certified

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, the GDOT does not count the firm's participation

toward any DBE goals, except as provided for in §26.87(i)). Credit is provided only from the date of certification going forward.

Section 26.55 (g) Firms Ceased to be Certified

The GDOT does not count toward an overall goal, the dollar value of work performed under a contract with a firm after it has ceased to be certified, pursuant to 26.87 (j).

Section 26.55 (h)

The GDOT does 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. The GDOT confirms payments have actually been made to the DBE firms with the monthly DBE report. The GDOT Contract DBE Special Provision “Criteria For Acceptability” requires the submission of copies of cancelled checks with the monthly DBE report.

SUBPART D - CERTIFICATION STANDARDS

Section 26.61 & 26.63 Certification Process

The GUCP uses the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The GUCP makes certification decisions based on the facts as a whole. The certification application forms and documentation requirements are found in Attachment 11.

Any firm seeking DBE certification from the GUCP shall have the burden of demonstrating, by a preponderance of the evidence, that it meets the requirements of 49 CFR Part 26 concerning group membership or individual disadvantage, business size, ownership, and control. As a matter of course, the GUCP will rebuttably presume that members of the designated groups identified in 49 CFR Part 26.67 (a) are socially and economically disadvantaged. This means that they may not have the burden of proving to the GUCP that they are socially and economically disadvantaged. However, applicant firms do have the obligation to provide the GUCP with information concerning their economic disadvantage. 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 the GUCP, by a preponderance of the evidence, that they are socially and economically disadvantaged. The GUCP will have the sole responsibility of making any and all determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage by considering all the facts in the record. The facts that will be reviewed governing group membership shall include, but not be limited to, the following:

- Whether a person has held himself/herself out to be a member of a designated group over a long period of time prior to application for certification.
- Whether the person is regarded as a member of the group by the relevant community.
- Whether the applicant has the ability to produce appropriate and verifiable documentation of group membership.
- Whether the applicant has the ability to demonstrate social and economic disadvantage on an individual basis if they are determined not to be a member of a designated disadvantaged group.

Individuals that are not members of the designated groups identified in 49 CFR Part 26.67 (a), are not presumed to be socially and economically disadvantaged. The GUCP does accept applications for certification from firms owned and controlled by individuals who are not presumed to be socially and economically *disadvantaged*. We will consider each such

application on a case-by-case basis to determine whether each individual whose ownership and control are relied upon for DBE certification is socially and economically *disadvantaged*.

Individuals, whom the presumption of disadvantage has been rebutted, have the burden of proving to the GUCP, by a preponderance of the evidence, that they are socially and economically disadvantaged.

Evidence of individual social disadvantage must include the following elements:

- A. At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;
- B. Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and
- C. Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) Education. Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) Employment. Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) Business history. The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or

other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

Section 26.65 Business Size

In determining whether a firm is an eligible DBE pursuant to the size standard, the **GUCP** will measure a firm, including its affiliates, against the SBA *business* size standard(s) found in 13 CFR 121 appropriate to the types of work, as defined by the 2012 North American Industry Classification System (NAICS) codes, the firm seeks to perform on contracts.

Even if it meets the requirements of the SBA, **GUCP** will not consider a firm as an eligible DBE if it has had average annual gross receipts over the last three years in excess of \$23.98 million. The latter is the amount that the Secretary adjusts for inflation from time to time.

The **GUCP** reviews the firm's three previous years of business tax returns filed with the US Internal Revenue Service, including its affiliates, to ascertain the firm's gross receipts are below the SBA size standards in the applicable NAICS codes and the current DBE program cap.

Section 26.67 Social and Economic Disadvantage

- a) 1).The **GUCP** rebuttably presumes 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. To validate this presumption, the **GUCP** requires applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged. 2).(i) The **GUCP** requires 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. The **GUCP** requires 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, the **GUCP** uses the DOT personal net worth form provided in Attachment 12 without change or revision. Where necessary to accurately determine an individual's personal net worth, the **GUCP** 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). (iii) In determining an individual's net worth, the **GUCP** observes 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, the GUCP does 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 the GUCP 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) 1) An individual's presumption of economic disadvantage may be rebutted in two ways.
 - (vii) 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. The GUCP is 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.
 - (viii) (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, the GUCP 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) The GUCP has a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

- 2) If the GUCP has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged the GUCP may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. The GUCP proceeding will follow the procedures of §26.87.
 - 3) In such a proceeding, the GUCP has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. The GUCP 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, the GUCP attributes 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) the GUCP will 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. (Including Domestic partnerships and Civil Unions as immediate family members and spouses).
- 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. The GUCP makes 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 49 CFR 26. The GUCP requires that applicants provide sufficient information to permit determinations under the guidance of Appendix E.

Section 26.69 Determining Ownership

- a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, the GUCP considers all the facts in the record, viewed as a whole. Including, but not limited to, facts found on stock certificates, business tax records, and corporation by laws, and/or operating agreements. The body of information that is examined and used as a guide for evaluation purposes is as follows:
- b) To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. 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. For 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. Limited liability companies must have at least 51 percent of each class of member interest owned by socially and economically disadvantaged individuals.
- c) A firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.
- d) Securities that constitute ownership of a firm shall be held directly by disadvantaged persons. No securities or assets held in trust, or by any guardian for a minor, shall be considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust shall be 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 will be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

- e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. The GUCP views insufficient contributions to 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 will not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- f) The GUCP applies the following requirements 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) The GUCP always deems 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) The GUCP will 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. To overcome this presumption and permit the interests

or assets to be counted, the *disadvantaged* individual must demonstrate to the GUCP, 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) When marital assets (other than the assets of the *business* in question) held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, the GUCP deems 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. The GUCP does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically *disadvantaged* owner of the applicant firm. 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 will be required as an integral part of the firm's application for DBE certification.
- j) While the GUCP acknowledges a socially and economically *disadvantaged* individual's acquisition of his or her ownership interest as the result of a gift or transfer without adequate consideration, it will examine said matters closely. The same will apply to those situations in which the co-signature of a spouse 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. Continuing in this vein, particularly close and careful scrutiny will also be applied to the ownership of a firm or its assets that are transferred for adequate consideration from a spouse who is not a socially and economically *disadvantaged* individual to a spouse who is such an individual.

Section 26.71 Determining Control

The GUCP uses the same scrutiny oriented approach used for examining ownership as it reviews control issues. The body of information that will be examined and used as a guide for evaluation purposes is as follows:

- a) In order to be an eligible DBE, a firm must be both owned and controlled by socially and economically disadvantaged individuals. This dictates that even if an individual clearly

meets the standards for ownership, he/she still has to prove control of their firm. Since ownership and control issues are often intertwined,

- b) Only an independent business may be certified as a DBE. The GUCP considers an independent business as one whose viability is not dependent on its relationship with another firm or firms.
 - 1. In determining whether a potential DBE is an independent business, the GUCP will scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - 2. The GUCP considers 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. The GUCP examines 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. The aforementioned will also be reviewed from the vantage point of whether the consistency of relationships between the potential DBE and non-DBE firms conform to normal industry practice.
- c) DBE firm cannot 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.
- 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 are not precluded from being 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 the GUCP will be examined by the GUCP to determine if they are revocable because the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such GUCP is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that GUCP 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 will not be 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, The GUCP does not consider expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm as sufficient to demonstrate control.
- h) Georgia state or local law does not require persons to have a particular license or other credential in order to own and/or control a certain type of firm, but merely have an employee with the required license. The GUCP does not deny certification solely on the ground that the person lacks the license or credential. However, we will 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) The GUCP considers 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 offered by the firm. In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, we will 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) 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, the GUCP will make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as we do in other situations, without regard to whether or not the other persons are immediate family members. If we 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 will have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm will have to demonstrate to us, by clear and convincing evidence, that: (1) The transfer of ownership and/or control to the DBE; and (2) The disadvantaged

individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

- m) The GUCP considers in all cases, whether the applicant firm owns, rents or leases equipment necessary to perform its work. This is done within the context of what constitutes normal industry practice. Special attention will be given to rental, lease or purchase agreements that involve a relationship with a prime contractor or other party that compromises the independence of the firm.

Section 26.71(n) NAICS Codes

The GUCP grants 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 that it's socially and economically disadvantaged owners are able to control the firm with respect to that type of work. The GUCP does not require that the firm be recertified or submit a new application for certification, but the GUCP verifies 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) shall be described via work codes that include the most specific available NAICS code for that type of work with an additional three digit extension. To validate the proper NAICS assignment, the GUCP requests evidence from the firm such as resumes, contracts, invoices, professional licenses, equipment, and employees related to the work previously performed.
- 2) Firms and GDOT must check carefully to make sure that the work codes are kept up to date and accurately reflect work which the GDOT has determined the firm's owner can control. The firm bears the burden of providing detailed company information GDOT needs to make an appropriate work code designation.
- 3) If a firm believes that there is not a work 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 GDOT, in its certification documentation, supplement the assigned 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, as GDOT will rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

- 4) The GUCP, in this situation, will not require that the firm be re-certified or submit a new application for certification, but will verify the disadvantaged owner's control of the firm in the additional type of work.
- o) A business operating under a franchise or license agreement will have to meet all necessary requirements applicable to its defined legal form and the franchiser or licensor cannot be affiliated with the franchisee or licensee. In determining whether affiliation exists, the GUCP will 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, to ensure that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. In addition, issues arising through affiliation such as common management or excessive restrictions on the sale or transfer of the franchise interest or license will also be explored.
- 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. Any said specific written concurrence would be obtained for the record to determine if there are any provisions that are not retractable by the socially and economically disadvantaged partners.
- 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. The GUCP will review prevailing employee leasing agreements within the parameters of industry practice, good business sense, and operational control of the firm and affiliation of the applicant firm with the employee-leasing venture.

26.73 Other Rules

(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, the GUCP does not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE. (2) The GUCP 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) The GUCP evaluates the eligibility of a firm on the basis of present circumstances. The GUCP does not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part. (2) The GUCP does 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 GUCP 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, the GUCP 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) The GUCP 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 the GUCP 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, the GUCP 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 the GUCP 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) The GUCP does 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.

SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 Unified Certification Programs

- a) The GUCP uses the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in DOT -assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The GUCP makes certification decisions based on the facts as a whole.

For information about the certification process or to apply for certification, firms should contact the **GDOT Help desk at (404) 631-1273 or email DBE@dot.ga.gov**

***GDOT- Office of EEO
Disadvantaged Business Enterprise Program
600 W Peachtree Street, N W, 7th Floor
Atlanta, Georgia 30308
Telephone (404) 631-1972
Fax (404) 631-1943***

Our certification application forms and documentation requirements are found in the Attachment Section of this document.

- 1) The Georgia Department of Transportation (GDOT) and The Metropolitan Atlanta Rapid Transit Authority (MARTA) has entered into a State of Georgia Unified Certification Program (known as the GUCP agreement).
 - 2) The agreement provide for the establishment of a UCP meeting all the requirements of this section. The agreement specifies 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 also commits recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. Attachment 13.
- b) The GUCP makes 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 GUCP provides “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.

- c) All certifications by the GUCPs are pre-certifications. A firm need-not submit bids or offers for a contract prior to DBE certification.
- d) The GUCP does not process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business.
- e) The GUCP does not participate in a regional UCP. The GUCP has not entered into any written reciprocity agreements with other UCPs.
- f) The GUCP has not entered into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. The GUCP may grant reciprocity to other recipient's certification decisions.
- g) The GUCP maintains a unified DBE directory containing, for all firms certified by the GUCP. The GUCP makes the directory available to the public electronically, on the internet, as well as in print. The GUCP makes updates the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and provides a printed version of the Directory upon request.

Section 26.83 Procedures for Certification Decisions

- a) The GUCP ensures that only firms certified as eligible DBEs under this section participate as DBEs in your program.
- b) The GUCP determines the eligibility of firms as DBEs consistent with the standards of subpart D of this part. The totality of the information collected is measured against data obtained from the DBE onsite review of an applicant firm, as well as, their business location and job site visit. GDOT thoroughly analyzes information received and reviews information gained from the Disadvantaged Business Enterprise Certification Affidavit, as well as supplemental data, before conducting the on-site review. Firms located outside of Georgia and firms located in Fulton, DeKalb, or Clayton Counties are processed through the MARTA. All other firms are processed through the GDOT.
 - a. As of November 2015, all MARTA submissions are done electronically. In any case where a firm expresses the inability to submit their application through MARTA, due to economic constraints, GDOT is able to process the application, or provide appropriate supportive services to the firm.

- b. Annual affidavits and removal of eligibility for non-responsiveness to the annual affidavit are processed through the initial certifying partner.
 - c. The removals of certification eligibility, unrelated to the annual affidavit, are processed by the GDOT. The MARTA may provide a recommendation for removals of certification eligibility for circumstances unrelated to annual affidavits.
 - d. The MARTA reports certification actions (approval or denial) to the GDOT on a weekly basis. The GDOT enters the information into the directory database, and the published UCP directory is updated immediately from the database.
 - i. UCP Directory <http://www.dot.ga.gov/PS/Business/DBE>
- c) 1. The resulting on-site review and visit to job site report are then made an integral part of the applicant's file and is reviewed as a significant segment of the whole. This report, in conjunction with the certification standards data that has been gathered, is organized in an ordered file that supports any DBE status recommendation put forth. A certification file is developed for each applicant firm. It is submitted to the applicable certifying partner's Administrator for review and concurrence. Upon the concurrence of the Administrator, an approval memo is attached and data on the firm is entered into the DBE computerized data bank maintained by the GUCP and a certification letter can be developed for the signature of the Administrator. The GUCP takes all the following steps in determining whether a DBE firm meets the standards of subpart D:
- i. Performs an on-site visit to the firm's principal place of business. The GUCP interviews the principal officers and reviews their résumés and/or work histories. The GUCP may also interview key personnel of the firm if necessary. The GUCP performs 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 jurisdiction or local area. The GUCP relies upon the site visit report of any other recipient with respect to a firm applying for certification;
 - ii. Analyzes 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. [Analyzes the bonding and financial capacity of the firm](#); lease and loan agreements; bank account signature cards;
 - iv. Determines the work history of the firm, including contracts it has received, work it has completed; and payroll records;
 - v. Obtains 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.

3. The GUCP uses the application form provided in Attachment 11 without change or revision.
 4. The GUCP ensures that the applicant attests to the accuracy and truthfulness of the information on the application form. This is done 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.
 5. The GUCP reviews all information on the form prior to making a decision about the eligibility of the firm. The GUCP requests 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 the GUCP has obtained about that firm the GUCP promptly makes the information available to the other recipient.
 - e) [Reserved]
 - f) The GUCP does not impose an application fee for certification.
 - g) The GUCP safeguards disclosures 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. In responding to requests for information concerning any aspect of the DBE program, the GUCP complies with the provisions of the Federal Freedom of Information and Privacy Act (5 U.S.C. 552 and 552a). The GUCP may make available to the public any information concerning the DBE program and certification, release of which is not prohibited by Federal Law. The GUCP will not release 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 documentation. All requests must be filed with the GDOT. MARTA will be apprised of any requests and asked to provide input on how to respond, as needed
 - h) 1. Once the GUCP has certified a DBE, it remains certified until and unless the GUCP removes its certification, in whole or in part, through the procedures of §26.87, except as provided in §26.67(b)(1) .

2. The GUCP does not require DBEs to reapply for certification or undergo a recertification process. However, the GUCP 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 attention of the GUCP that leads to question the firm's eligibility, the GUCP may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

- i) A DBE must inform the GUCP 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. A DBE 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. The DBE must provide the written notification within 30 days of the occurrence of the change. If the DBE fails to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c).

- j) A DBE must provide to the GUCP, every year on the anniversary of the date of its 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) The GUCP strives to make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. The GUCP 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. If the recommendation is for denial by the administrator, then a letter is generated to the firm as to the reasons for the denial. In the notification of denial, the applicant is advised of their appeal rights to the United States Department of Transportation. Firms denied certification are not able to reapply for certification for one year from the date of the denial. The firm has ninety (90) days to appeal the decision to the U.S. DOT, Departmental Office of Civil Rights, 1200 New Jersey Avenue, SE, W78- 338, Washington, D.C. 20590. If the U.S. DOT overturns the GUCP denial, the firm is certified.

- l) The GUCP advises each applicant within 30 days from receipt of an 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 the GUCP has issued a decision on the application, the applicant can resubmit the application at any time. The GUCP does not apply the waiting period provided under §26.86(c) of this part before allowing the applicant to resubmit its application. However, the GUCP 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. The GUCP does apply the waiting period provided under §26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications prior to a decision.

Section 26.85 Interstate Certification (Attachment 15)

The State of Georgia Unified Certification Program (GUCP) may elect to enter into a written reciprocity agreement with UCPs in other counties, cities, states and/or regions. The decision to execute such an agreement will be made by the GUCP.

- a) With respect to any firm that is currently certified in a home state outside the State of Georgia.
- b) Firm currently certified in its home state applies to the GUCP for DBE certification, GUCP may, at its discretion, accept the home state's certification and certify the firm without further procedures.
 - 1. To obtain certification in this manner, the firm must provide the GUCP a copy of its certification from the home state.
 - 2. Before certifying the firm, the GUCP must confirm that the firm has a current valid certification from the home state. The GUCP can do so by reviewing the

home state's electronic directory or obtaining written confirmation from the home state.

c) In any situation in which the GUCP chooses to accept the home state's certification of a firm as provided in paragraph (2) of this section, the applicant firm must provide the information in paragraphs (3) (a) through (d) of this section to the GUCP.

1. The applicant must provide the GUCP a complete copy of the application form, all supporting documents, and any other information it has submitted to the home state or any other state related to the firm's certification. This includes affidavits of no change (see 26.83 (j)) and any notices of changes (see 26.83 (i)) that it has submitted to the home state, as well as any correspondence it has had with the home state's UCP or any other recipients concerning its application or status as a DBE firm.
2. The applicant must also provide to the GUCP any notices or correspondence from states other than the home state relating to its status as an applicant or certified DBE in those states. For example, the firm has been denied certification or decertified in State C, or subject to a decertification action there, it must inform the GUCP of this fact and provide all documentation concerning this action to GUCP.
3. If the applicant has filed a certification appeal with U.S. DOT (see 49 CFR 26.89), it must inform the GUCP of the fact and provide its letter of appeal and DOT's response to GDOT.
4. The applicant 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 it has 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 49 CFR 26.85 (c) (1), is an identical copy of the information submitted to the home state
 - ii. If the on-site report from the home state supporting the firm's certification in the home state is more than five years old, as of the date of its application, the GUCP may require that the affidavit also affirm that the facts in the on-site report remain true and correct.

d) When the GUCP receives, from an applicant firm, all the information required by paragraph (3) of this section, the GUCP must take the following actions:

1. Within seven days, contact the home state and request a copy of the site visit review report for the firm (see 49 CFR 26.83 (c) (1)), any updates to the site visit

review, and any evaluation of the firm based on the site visit. As the home state, the GUCP transmits this information to a requesting state within seven days of receiving the request.

2. If the GUCP determines there is good cause to believe that the home state's certification of the firm is erroneous or should not apply to Georgia may include the following:
 - i. Evidence that the home state's certification was obtained by fraud,
 - ii. New information, not available to the home state at the time of its certification, showing that the firm does not meet all eligibility criteria,
 - iii. The home state's certification was factually erroneous or was inconsistent with the requirements of this part
 - iv. The state law of Georgia requires a result different from that of the State law of the home state, and
 - v. The information provided by the applicant firm did not meet the requirements of paragraph (3) of this section.
3. If the GUCP determines that there is good cause to believe that the home state's certification is correct and applies to Georgia, GUCP will, no later than 60 days from the date on which it received from the applicant firm all the information required by paragraph (s) of this section, send to the applicant firm a notice that it is certified and place the firm on its directory of certified firms.
4. If GUCP determines that there is good cause to believe that the home state's certification is erroneous or should not apply to Georgia, GUCP will, no later than 60 days from date on which it receives from the applicant firm all the information required by paragraph (3) of this section, send to the applicant firm a notice stating the reasons for its determination.
 - i. This notice will state with particularity the specific reason why GUCP 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 GUCP with respect to these reasons.
 - ii. The firm may elect to respond in writing, to request an in-person meeting with GUCP's decision maker to discuss GUCP's objections to the firm's eligibility or both. If the firm requests a meeting, GUCP will 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 the evidence, that it meets the requirements of the Part with respect to the particularized issues raised by GUCP's notice. The firm is not otherwise responsible for further demonstrating its eligibility to GUCP.
 - iv. The decision maker for GUCP will be an individual who is thoroughly familiar with the provisions of this Part concerning certifications.

- v. GUCP will 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 may be appealed to the Departmental Office of Civil Rights pursuant to 49 CPR 26.89.
- e) If the GUCP does not receive, from the home state, a copy of the site visit report by a date fourteen (14) days after it has made a timely request for same, the GUCP may hold the action required by paragraphs (4)(b) through (d) of this section in abeyance pending receipt of the site visit review report. In this event, GUCP will, no later than 30 days from the date on which it receives from an applicant firm, all the information required by paragraph (3) of this section, notify the firm in writing of the delay in the process and the reason for it.
- f) 1. When GUCP denies a firms application, refutes the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (4)(d) of the section, or decertifies a firm, in whole or in part, the GUCP will make an entry in the Department of Transportation Office of Civil Rights (DOCR's) Ineligibility Online Database. GUCP will 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, and
 - iv. The reasons for the action
2. The GUCP will check the DOCR website to determine whether any firm that applies to it for certification or that it has already certified is on the list.
3. For any such firm that is on the list, the GUCP will promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, the GUCP will provide a copy of the decision to the requesting UCP within seven (7) days of receiving the request. As the UCP receiving the decision, the GUCP will then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.
- g) The GUCP has implemented the requirements of this section as of January 1, 2012.

26.86 Denial of Initial request for certification

- a) When the GUCP issues a denial, a letter is generated to the firm as to the reasons for the denial. In the notification of 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 are made available to the applicant, on request..
- b) [reserved]
- c) Firms denied certifications are not allowed to reapply for certification for one year from the date of the denial.
- d) Upon the administratively final denial of certification concerning, the firm may appeal to the US Department of Transportation under §26.89. The firm has ninety (90) days to appeal the decision to the U.S. DOT, Departmental Office of Civil Rights, 1200 New Jersey Avenue, SE, W78- 338, Washington, D.C. 20590. If the U.S. DOT overturns the GUCP denial, the firm is certified.

Section 26.87(a) Ineligibility complaints

The GUCP will accept written complaints from any person, including GUCP partners, alleging that a currently certified firm is ineligible. The complainant must state specific reasons for ineligibility and submit any documentation in support of the complaint. The firm being challenged will be notified by the GUCP certifying member, in writing, of the challenge, the basic grounds, and the relevant regulations. The GUCP certifying member responsible for the certification shall thoroughly investigate the complaint, within a reasonable time, not to exceed 60 days. The GUCP shall notify the DBE in writing, via certified mail, of the preliminary findings. If reasonable cause to remove certification eligibility is found, the GUCP will notify the complainant of the specific grounds and inform the firm of the right to appeal the preliminary finding to the GUCP. The USDOT may notify the GUCP of reasonable cause to find a certified DBE firm to be ineligible and the GUCP shall immediately remove the certification eligibility of that firm.

26.87 (b) Removal of Eligibility

The GUCP is responsible for removing a DBE's eligibility, when necessary. As a result, the GUCP will accept and review written complaints from anyone who specifically delineates alleged reasons why a currently certified firm is ineligible. Such complaints must be addressed to the GEORGIA UNIFIED CERTIFICATION PROGRAM, Commissioner, One Georgia Center, 600 W. Peachtree Street, N.W., Atlanta, Georgia 30308. The GUCP will treat the identities of complainants with confidentiality as it re-examines its records concerning the firm, any material provided by the firm and the complainant, and other available information. In addition, the

GUCP will request additional information from the firm or conduct any other investigation that it deems necessary. If the results of the review reveal that there is reasonable cause to believe that the firm is ineligible, the GUCP will provide written notice to the firm that we propose to find the firm ineligible, setting forth the reasons for the proposed determination. Should no reasonable cause exist for removal of DBE eligibility, we will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of findings on the issue of reasonable cause will specifically reference the evidence in the record on which each finding is based. The re-examination of a firm's eligibility and the rendering of a determination will be completed as soon as possible.

- c) Because it is anticipated that the GUCP and/or the U.S. Department of Transportation may initiate independent removal of DBE eligibility proceedings for given reasons, the GUCP will immediately commence and prosecute a proceeding to remove eligibility as provided in the paragraph noted above, inclusive of an informal hearing.
- d) In such a proceeding, the GUCP will bear the burden of proving, by a preponderance of the evidence, that the firm does not meet required certification standards. We will 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 U.S. DOT, the GUCP will provide a transcript of the hearing to U.S. DOT and, on request, to the firm. The GUCP will retain the original record of the hearing and charge the firm only for the cost of copying the record. If the firm elects to present information and arguments in writing, without going to a hearing, the GUCP bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as we would during a hearing.
- e) Given that these proceedings need to be totally objective, GUCP will ensure that the hearing personnel did not take part in any actions leading to or seeking the removal of the affected firm's DBE eligibility. Under no circumstances will hearing personnel be subject to direction from the office or personnel who did take part in these actions. However, the decision-makers will be individuals who are knowledgeable about the certification requirements of our DBE program and the United States Department of Transportation's DBE regulation.
- f) Their decisions to remove eligibility will not be based on a reinterpretation or changed opinion of information available to us at the time of a firm's original certification. Their decision will only be based on one or more of the following:
 - 1. Changes in the firm's circumstances since the certification of the firm by the GUCP that renders the firm unable to meet the eligibility standards;
 - 2. information or evidence not available to the GUCP at the time the firm was certified;

3. information that was concealed or misrepresented by the firm in previous certification actions by a recipient;
4. A change in the certification standards or requirements of the Department since we certified the firm; or
5. A documented finding that our determination to certify the firm was factually erroneous.
6. The firm has failed to cooperate with you (see §26.109(c));[ie, failure to file a timely annual affidavit]
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 [ie, not performing a commercially useful function]
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) Following the decision, GUCP will provide the affected firm written notice of the decision and the reasons for it, including specific references to data in the record. If the said determination is appealed to the United States Department of Transportation, GUCP's determination will remain in place unless and until it is overturned by U.S. DOT.

h) [reserved]

(i) A firm remains an eligible DBE during the pendency of the GUCP proceeding to remove its eligibility. The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j)When a prime contractor has made a commitment to using the ineligible firm, or the GDOT has 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. The GDOT directs 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.

If a prime contractor has executed a subcontract with the firm before the GDOT has 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 the GDOT has 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 the GDOT issued the notice

of its ineligibility shall not count toward the GDOT's overall goal, but may count toward the contract goal.

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

26.88 Summary suspension of certification.

(a) The GUCP will 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. If the GUCP determines after hearing from the DBE that the period of incarceration has ended or will end in 30 days, the GUCP may lift the suspension (i.e., reinstate the DBE's certification) without initiating removal proceedings. Similarly, when an essential disadvantaged owner dies, his or her heirs who are also members of groups presumed to be disadvantaged are not presumed to be able to demonstrate sufficient ownership or control of the company. DBE certification is not transferable and does not pass to an owner's heirs. The GUCP issues a short suspension of the DBE's certification until the heirs submit sufficient evidence to support a continuation of the firms' DBE status. So long as the firm has not exhibited a failure to cooperate (ie, firm provided notice of the change and the Annual Affidavit is not delinquent).

(b)(1) The GUCP 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 GUCP will 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 GUCP 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 GUCP 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.

Section 26.89 Certification Appeals to the USDOT

(a)(1) A firm that is denied certification or whose eligibility is removed by the GUCP, including SBA-certified firms, may make an administrative appeal to the Department. (2) If a complainant in an ineligibility complaint to the GUCP (including the concerned operating administration in the circumstances provided in §26.87(c)), that complainant may appeal to the Department if the GUCP 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) The complainant may

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 GUCP's decision remains in effect. The Department does not stay the effect of the GUCP's decision while it is considering an appeal.

(c) If the complainant wants to file an appeal, the complainant must send a letter to the Department within 90 days of the date of the GUCP'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 ninety (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 GUCP's complete administrative record in the matter. The GUCP provides the administrative record, including a hearing transcript, within twenty (20) days of the Department's request. The Department may extend this time period on the basis of a GUCP's showing of good cause.

(e) The USDOT 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; the GUCP; or a firm or other private party

Section 26.91 Actions Following Certification Appeal

(a) If the GUCP's action is appealed under §26.89, the decision is binding. It is not binding on other recipients.

(b) If it is the GUCP to which a DOT determination under §26.89 is applicable, the GUCP will take the following action: (1) If the Department determines that the GUCP erroneously certified a firm, the GUCP will remove the firm's eligibility on receipt of the determination, without further proceedings on its part. Effective on the date of 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 the GUCP erroneously failed to find reasonable cause to remove the firm's eligibility, the GUCP will 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 the GUCP erroneously declined to certify or removed the eligibility of the firm, the GUCP will certify the firm, effective on the date of your receipt of the written notice of Department's determination. (4) If the Department determines that the GUCP erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, the GUCP must take appropriate corrective action as determined by the Department. (5) If the Department affirms the GUCP determination, no further action is necessary.

(c) Where DOT has upheld the GUCP 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 the GUCP 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.

Section 26.107 Enforcement Actions on participating firms

a) 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 USDOT may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(b) 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 USDOT 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 the GUCP. Such certification does not preclude the USDOT 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 USDOT 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.

Section 26.109: Info, Cooperation, Confidentiality

A. Availability of records. (1) In responding to requests for information concerning any aspect of the DBE program, GDOT complies with provisions of the Georgia Open Records Act, 50-18-70, et seq. The Department may make available to the public any information concerning the DBE program, release of which is not prohibited by Georgia or Federal law 1) GDOT will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information, consistent with federal, state and local law. 2) Notwithstanding any contrary provisions of state or local law, GDOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than DOT) without written consent of the submitter, 3) Notwithstanding any provision of federal or state law, GDOT will not release information that may be reasonably construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, GDOT will transmit this information to DOT in any certification appeal proceeding under 49 CFR 26.89 of this part or to any other state to which the individual's firm has applied for certification under 49 CFR 26.85. 4) The Department will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with federal, state and local law. All information submitted by applicant firms with their applications for certification and affidavits of continued eligibility, including their personal net worth statements, are confidential and exempt from the requirements of Georgia's public records laws.

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 will be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.

C. Cooperation. All participants in GDOT's DBE program (including, but not limited to, 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 compliance reviews, certification reviews, investigations, and other requests for information by the U.S. Department of Transportation or GDOT. Failure to do so shall be a ground for appropriate action against the party involved.

D. Intimidation and Retaliation. No contractor or any other participant in the program is allowed to 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. 1. Individuals who have cause to think that they have been subjected to intimidation or retaliation shall follow the procedures below in processing and resolving a complaint. (i) The complainant shall present the complaint in written form to the Equal Opportunity Division Director or to the Equal Opportunity Administrator. (ii) The Equal Opportunity Director and/or Equal Opportunity Administrator will contact the complainant to acknowledge receipt of the complaint and advise the complainant of his/her right to bring the alleged incident to the attention of the Federal Highway Administration (FHWA), United States Department of Transportation, United States Department of Justice, or other federal authority, as applicable, (iii) The Equal Opportunity Director and/or the Equal Opportunity Administrator will contact the party alleged to have caused the intimidation or retaliation of the complaint and advise the party of the proceedings and his rights during said proceedings. (iv) The Equal Opportunity Director and/or the Equal Opportunity Administrator will immediately notify the administrative head of the operational unit and Federal Highway Administration of the complaint, and will conduct an investigation within thirty (30) working days. (v) Within fifteen (15) days of completing the investigation, the Equal Opportunity Director and/or the Equal Opportunity Administrator shall submit a written report to the administrative head of the operational unit, with copies to the complainant, the party alleged to have caused the intimidation or retaliation, and the Federal Highway Administration. (vi) All documentation relating to the complaint shall be maintained in the Equal Employment Opportunity Office for a period of five (5) years. 2. Violation of this prohibition will constitute noncompliance with this part.

ATTACHMENTS

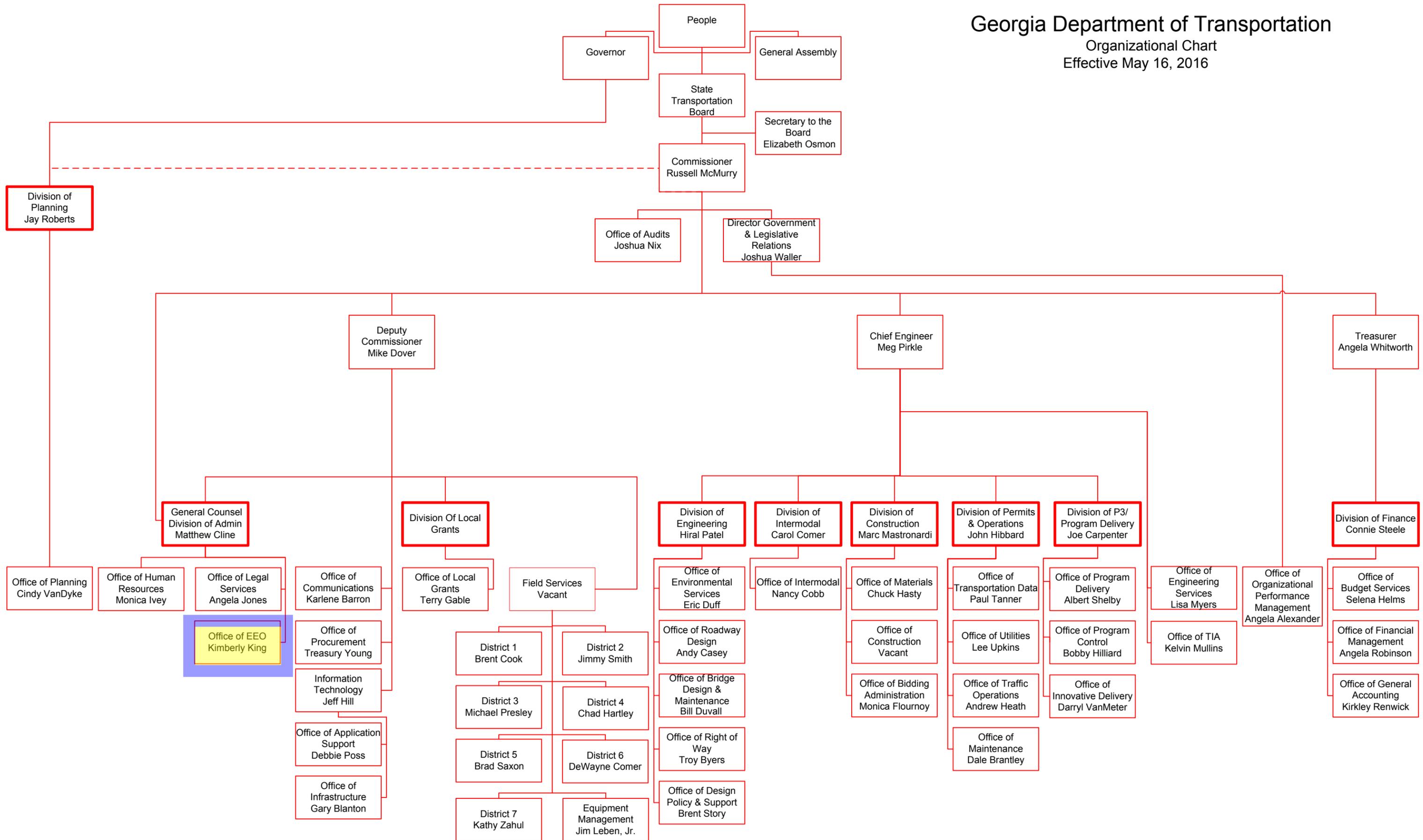
1. *Uniform Report of DBE Awards or Commitments and Payments*
2. *GDOT Organization chart*
3. *Web screen-shot of the Directory*
4. *District EEO Officers Review Report*
5. *District Consultant Compliance Officers*
6. *Small Business Program*
7. *GDOT's Goal and Methodology (see attachment 8)*
8. *8201-1 Disadvantaged Business Enterprise (DBE) Goal Evaluation.*
9. *Joint Check Policy & Procedures*
10. *Commercially Useful Function (CUF) inspection report*
11. *Certification Application Forms and documentation requirements*
12. *Personal Net Worth Form*
13. *UCP Agreement*
14. *DBE Criteria For Acceptability*
15. *Interstate Certification*
16. *Prompt Payment Provision and Procedures*

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS											
Please refer to the instruction sheet for directions on filling out this form											
1	Submitted to (check only one)		<input checked="" type="checkbox"/> FHWA		<input type="checkbox"/> FAA		<input type="checkbox"/> FTA - Recipient ID Number				
2	AIP Numbers (FAA Recipients); Grant Number (FTA Recipients):										
3	Federal Fiscal year in which reporting period falls				4. Date This Report Submitted:						
5	Reporting Period	<input checked="" type="checkbox"/> Report due June 2 (for period Oct 1-Mar 31)			<input type="checkbox"/> Report due Dec 1 (for period April 1-Sep 30)			<input type="checkbox"/> FAA annual report due Dec 1			
6	Name and address of Recipient:				Georgia Department of Transportation						
7	Annual DBE Goal(s):	Race Conscious Projection:		Race Neutral Projection:			OVERALL Goal:				
Awards/Commitments this Reporting Period											
A	AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD <small>(Total contracts and subcontracts committed during this reporting period)</small>		A	B	C	D	E	F	G	H	I
			Total Dollars	Total Number	Total to DBEs (dollars)	Total to DBEs (number)	Total to DBEs/Race Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (dollars)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
	8	Prime contracts awarded this period	\$ -	0	\$ -	0		\$ -	0	#DIV/0!	
	9	Subcontracts awarded/committed this period			\$ -	0		\$ -		#DIV/0!	
	10	TOTAL			\$ -	0	\$ -	0	\$ -	0	#DIV/0!
B	BREAKDOWN BY ETHNICITY & GENDER		A	B	C	D	E	F			
			Total to DBE (dollar amount)			Total to DBE (number)					
		Women	Men	Total	Women	Men	Total				
	11	Black American			\$ -	1	2	3			
	12	Hispanic American			\$ -	0	0	0			
	13	Native American			\$ -	0	0	0			
	14	Asian-Pacific American	\$ -	\$ -	\$ -	0	0	0			
15	Subcontinent Asian Americans	\$ -	\$ -	\$ -	0	0	0				
17	Non-Minority			\$ -	2	0	2				
17	TOTAL	\$ -	\$ -	\$ -	3	2	5				
Payments Made this Period											
C	PAYMENTS ON ONGOING CONTRACTS		A	B	C	D	E	F			
			Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs			
18	Prime and subcontracts currently in progress								#DIV/0!		
D	TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD		A	B	C	D	E				
			Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percent to DBEs				
	19	Race Conscious				\$ -		#DIV/0!			
	20	Race Neutral						#DIV/0!			
	21	Totals		0	\$ -		\$ -	#DIV/0!			
22	Submitted by:			23. Signature:			24. Phone Number:				

Georgia Department of Transportation

Organizational Chart

Effective May 16, 2016



ATTACHMENT 3

Web Screen-Shot of the DBE Directory

Georgia State UCP Directory As of: 5/26/16

Business Name	Vendor Number	Contact	Fax	Phone	Address	City	State	Zipcode	Email	Certification Type	NAICS
180 PARKING SERVICES, LLC	00000000014088	MR. CARLOS D. SMITH		4048911719	1954 AIRPORT RD., STE. 203	ATLANTA	GA	30341	csmith@180parking.com	Disadvantaged Business Enterprise (DBE)	81233
1ST RESOURCE SOLUTIONS, LLC	00000000013053	MR. Darryl Sanders	(888)499-1527	(323)500-3134	1811 N. Dumont Drive	Marion	IN	46952	DSANDERS@1STRESOURCESOLUTIONS.COM	Disadvantaged Business Enterprise (DBE)	42512
216 RESOURCES, INC.	00000000012451	MS. BOBBIE PORTER	8884428054	(281)809-5244	10700 RICHMOND AVENUE STE 154	HOUSTON	TX	77042	216resources@gmail.com	Disadvantaged Business Enterprise (DBE)	23622, 42332, 42512, 48422, 541614
24 x 7 SYSTEMS, INC.	00000000013512	MR. SRINIVAS SURAPANENI	(866)532-9047	(404)229-7952	100 BARTON PL.	ALPHARETTA	GA	30005	SRINIVAS@24X7SYSTEMS.COM	Disadvantaged Business Enterprise (DBE)	541511
2CLARITY, LLC	00000000013009	MR. Napoleon Wright	(770)948-9850	(678)392-5247	260 PEACHTREE STREET NW	ATLANTA	GA	30303	nwright@2Clarityllc.com	Disadvantaged Business Enterprise (DBE)	54143, 541512, 541611
2KB ENERGY SERVICES, LLC	00000000014023	MR. GEORGE M. BUCHANAN, JR.	(404)529-4534	(404)398-4430	7778 MCGINNIS FERRY RD	SUWANEE	GA	30024	georgeb@2kenergyservices.com	Disadvantaged Business Enterprise (DBE)	54169
2M ATL, LLC	00000000012975	MR. WILLIAM KELLY	(678)436-8842	(404)625-5835	400 WEST PEACHTREE ST., STE. 2701	ATLANTA	GA	30308	vana@2mail.com	Disadvantaged Business Enterprise/Airport Concessionaire	23799, 48819, 54138, 541611, 54162, 54169, 621111, 621399, 621498
2M DESIGN CONSULTANTS, INC.	00000000013248	MS. BELINDA A. MORROW, PRESIDENT		(404)931-3888	3130 HARTRIDGE DRIVE	JOHNS CREEK	GA	30022-6102	BMORROW@2MDESIGNCONSULTANTS.COM	Disadvantaged Business Enterprise (DBE)	42512, 54141, 541611
360 SPECIALTIES, LLC	00000000012942	MS. Andrea Barnett	(866)908-6327	(404)423-2444	1121 Alderman Drive, Suite 108	Alpharetta	GA	30005	angie@360specialties.com	Disadvantaged Business Enterprise (DBE)	23839
360 TXC, LLC	00000000012979	MS. DANA LESTER	(577)710-7474	(512)574-0623	901 S. MOPAC #300	AUSTIN	TX	78701	360txc@gmail.com	Disadvantaged Business Enterprise (DBE)	23622
3D SECURITY INC.	00000000012506	MS. SHERIN HABIB		(404)593-3211	5255 SUNSET MAPLE TRL	LILBURN	GA	30047	mhhabib@3dsecurityusa.com	Disadvantaged Business Enterprise (DBE) Airport Concessionaire	541511, 541512
1701 RESTAURANT CORP.	2F0838	MR. MOHAMEDALI KASSAM	7709824480	(404)510-3616	1721 HEATHERGLADE LANE	LAWRENCEVILLE	GA	30045-9756	MAKASSAM@BELLSOUTH.NET	Disadvantaged Business Enterprise	722211



EEO Contract Compliance Project Review Report

Date:

Contractor:	GDOT Project #:
County:	District:
GDOT Engineer :	Contractor's EEO Officer:

RATING:

- SATISFACTORY**
- On-site Training was provided to correct minor deficiencies.**
- In-depth Training is needed.**

Reviewing Officer:

Comments: _____

Pass Through Project to a Local Government YES

Reference LAP Manual Section 1.1, the LG must comply with local, state, and Federal laws and regulations during this phase of the project administration. During construction of a Local Let project, the LG must ensure that adequate inspections are made to determine that the construction is in accordance with the contract plans and specifications, that materials meet the project specifications and that personnel that are performing the testing are certified by GDOT, that Federally required records are maintained and retained to support the eligibility for and the reimbursement of Federal funds, and that progress reports are accurate for all construction activities.

The Prime Contract physically (has)/ (does not have) the required Federal Provisions incorporated.	
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Reference to Construction Manual

Chapter 15 Payrolls (including DBEs):

1. Payrolls were on file for the Prime and all approved Subcontractors except:	
2. Project representative indicated all payrolls have been received except:	
3. Payrolls that were spot checked were up to date except:	
4. Payrolls that were spot checked appeared to have been reviewed by project personnel except:	
5. Payrolls that were spot checked had wage classifications either in the contract or a request for additional wage classification submitted except:	
6. Payrolls that were spot checked had correct wage rates except:	
7. Payrolls that were spot checked had associated labor interviews except:	

Chapter 16 Subcontracts (including DBEs)

1. Physical Subcontracts were on file for all approved subcontractors except:	
2. Subcontracts over \$10,000 that were spot checked had FHWA 1273, and Executive Order 11246 physically incorporated except:	
3. Subcontracts that were spot checked had the Prompt Payment Special Provision, and Appendix A physically incorporated except:	

Chapter 17 DBE

1. Current DBE Report (is) / (is not) on file.	
2. DBE reports (have) / (have not) been reviewed and signed by project personnel.	
3. Current DBE goal (does) / (does not) indicate a potential shortfall.	
4. At least 1 CUF inspection is on file for all reported DBEs except:	

Chapter 18 Training Program (OJT): Reference OJT Manual

1. Project (does) / (does not) have an OJT requirement.	
2. Contractor (has) / (has not) submitted an OJT plan to the Department for approval. --30 days from NTP--	
3. Contractor (has) / (has not) submitted OJT Trainees to the Department for approval.	
4. Plan and trainee approvals (are) / (are not) on file from EEO.	

Reference FHWA 1273

1. Bulletin Board (is) / (is not) placed in an area readily accessible to employees, applicants for employment and potential employees.	
2. Bulletin Board (has) / (does not have) all required documents.	
3. Discriminatory Practices (were) / (were not) witnessed.	



EEO Audit Report

Date:

Contractor:	GDOT Project #:
County:	District:
GDOT Engineer :	Contractor's EEO Officer:

Field Inspections Performed: DBE CUF , Labor Interview , Board Inspection

Findings and Recommendations:

Engineer's Follow-Up Response to Findings:

Disclaimer: this audit report must not be construed as a final determination of the Contractor's compliance or non-compliance with the federal regulations. The audit does not guarantee that all items or areas have been reviewed by the Compliance Officer. In accordance with the Federal regulations, any violation recognized may be grounds for withholding the Contractors progress payments. In accordance with the Contract, the Engineer will decide all questions that may arise as to the acceptable fulfillment of the Contract on the part of the Contractor.

GDOT - CEI Compliance Officer

Reference to Construction Manual and Contract Specifications

CM Chapter 15 & FHWA 1273 Sec. IV. Davis Bacon and Related Act Provisions

1. Payrolls (Prime and Subcontractors) are up to date and have the <u>signed</u> Statement of Compliance.	
2. Payrolls appeared to have been reviewed by project personnel.	
3. Labor and Mechanics listed on the payrolls had wage classifications either in the contract or a request for additional wage classification (SF 1444) has been submitted.	
4. Payrolls show payroll deductions on Laborers and Mechanics.	
5. Active contractors working/ or have worked on the project have associated labor interviews.	
6. A spot check of Payroll and Labor Interviews against Davis Bacon wage rates revealed the Laborers and Mechanics were paid in accordance with the contract.	

CM Chapter 16 & Referenced Regulations

1. Physical Subcontracts were on file for all approved subcontractors working on the project.	
2. Subcontracts over \$10,000 have Executive Order 11246 physically incorporated.	
3. Subcontracts have the FHWA 1273, Prompt Payment Special Provision, Spec 109 “No Retainage” Language, and Appendix A physically incorporated.	

CM Chapter 17 & DBE Special Provision “Criteria for Acceptability”

1. Current DBE Report is on file. DBE Report #:	
2. DBE reports have been reviewed and signed by project personnel.	
3. Current DBE goal does not indicate a potential shortfall.	
4. At least 1 CUF inspection is on file for all reported DBEs.	
5. A spot check of CUF Inspections appears representative of the DBE firms’ work.	
6. The DBE Report appears commensurate with the cancelled checks.	
7. DBE cancelled checks are not “Joint Checks”.	

CM Chapter 18 Training Program (OJT), Std Spec 158. & OJT Manual

1. Project has an OJT requirement.	
2. Contractor has submitted an OJT plan to the Department for approval. --30 days from NTP--	
3. Contractor has submitted OJT Trainees to the Department for approval.	
4. Plan and trainee approvals are on file from EEO.	
5. Spot check of training progress indicates a potential shortfall.	

Bulletin Board Inspection Checklist (Quarterly Inspection)

1. Bulletin Board is placed in an area readily accessible to employees.	
2. Bulletin Board has all required documents.	

REVISED July 31, 2012

GEORGIA DEPARTMENT OF TRANSPORTATION SMALL BUSINESS ENTERPRISE (SBE) PROGRAM

Statement of Policy

It is the policy of the Georgia Department of Transportation Board to promote equal opportunity and non discrimination in all of its procurement matter practices and policies in accordance with State and Local laws. The GDOT Board policy is to enhance the Small Business Enterprise participation in the GDOT professional and construction service areas in compliance with Title 49, Code of the Federal Regulation, Part 26, (49 CFR part 26).

Purpose

The purpose of the Small Business Enterprise (SBE) Program is to promote economic business opportunities through the GDOT procurement, consultant services, and construction process for all small companies and eligible SBE's seeking to do business with Georgia Department of Transportation (GDOT). The overall goal is to increase the number of small companies doing businesses with GDOT on a race and gender neutral basis while promoting equal business opportunities for all.

The SBE program shall apply to all contracts and business opportunities in construction, consultant services, procurement, material purchases, professional, technical services, or any industry of any size. The SBE program is designed to allow for greater participation by encouraging small business competition. The SBE is specifically aimed at expanding and encouraging business opportunities for small owned businesses. A company must fit the definitions set out by the SBA. The SBE program will cover contracts let by state highway agencies, airports, transit authorities, and other state and local agencies that receive DOT funds. The GDOT Small Business Enterprise Program is not to be considered or implemented as annual goal, project specific goals, quotas or set aside.

What is a Small Business

The Small Business Administration (SBA) defines a "small business" either in terms of the average number of employees over the past 12 months, or average annual receipts over the past three (3) years. A *Small Business* may be a sole proprietorship, partnership, corporation, or any other legal form. A firm cannot exceed the size of \$22.41 million and still be seen as a *Small Business*. This size limit is periodically adjusted for inflation.

In addition, SBA defines a U.S. small business as a concern that:

- Is organized for profit;
- Has a place of business in the US;
- Is independently owned and operated; and
- Is not dominant in its field on a national basis.

In determining what constitutes a small business, the definition will vary to reflect industry differences, such as size standards.

Size Standards

Small Business Administration's size standards define whether a business entity is small and, thus, eligible for Government programs and preferences reserved for "small business" concerns. Size standards have been established for types of economic activity, or industry, generally under the North American Industry Classification System (NAICS).

Since all federal agencies must use SBA size standards for contracts identified as small business, GDOT will select to use the North American Industry Classification System (NAICS) code(s) that best describe the small business and then determine if, the business meets size standards for the selected NAICS codes. In accordance with: **13 C.F.R. PART 121—SMALL BUSINESS SIZE REGULATIONS**

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

Industry Group	Size Standard
Manufacturing	500 employees
Wholesale Trade	100 employees
Retail Trade	\$7 million
General & Heavy Construction	\$33.5 million
Dredging	\$20 million
Special Trade Construction Contractors	\$14 million
Business and Personal Services (Except Architectural, Engineering, Surveying, and Mapping Services)	\$7 million
Computer programming, data processing and systems design)	\$25 million
Small Business Size Standards matched to NAICS	

NAICS - North American Industry Classification System - A six digit classification code assigned to the industry

More information on the SBA size standards can be found on the [SBA Website](#).

GDOT currently operates a federally funded DBE Program for qualifying socially and economically disadvantaged minorities and women. The SBE is specifically aimed at expanding and encouraging business opportunities for small owned businesses. A company must fit the definitions set out by the SBA. Companies can be eligible for participation in more than one category if the owner fits more than one definition, *e.g.*, small (8a), disadvantaged, woman, veteran and disabled owned business. The SBE program will cover contracts let by state highway agencies, airports, transit authorities, and other state and local agencies that receive DOT funds. The GDOT Small Business Enterprise Program is not to be considered or implemented as annual goal, project specific goals, quotas or set aside.

A firm cannot exceed the size of \$22.41 million and still be seen as a *Small Business*. This size limit is periodically adjusted for inflation.

HOW TO APPLY FOR THE SMALL BUSINESS ENTERPRISE PROGRAM

Applications may be accepted on line or delivered to GDOT for processing. A Small Business Advocate will process the information before making a determination for eligibility for inclusion into the program data base and placing the applicant information on the GDOT Small Business website. The Applicant bears the burden of proof to GDOT that it meets all criteria for small business eligibility. However, GDOT will have the responsibility to examine the application and support documentation to make a final determination for eligibility.

Applicant must submit a signed affidavit affirming under penalty or perjury that the business qualifies as a small business.

In order to qualify as an SBE, a business may be requested to submit a letter or other documentation from the any organization establishes that the firm qualifies as a small business.

Procedures for the Implementation the SBE Program:

Under the directions of the GDOT Office of Equal Office, the SBE Program shall have the following authority and implementation of the small business opportunity program:

- (1) Administration and enforcement of the SBE program;**
- (2) Establishment of any written procedures, informal guidelines, and forms as may be necessary to effectuate the program;**
- (3) Collaborate with the various GDOT departments to ensure maximum outreach and SBE participation which will include but not limited to the following:**
 - a. Provide information Orientation on “How to Do Business with GDOT” for the newly registered small business.**
 - b. Provide small business electronic messages for business opportunities**
 - c. Other Department will be involved in conducting the training session on various topics specific:**
 - Construction Department**
 - Bidding and Administration**
 - Information Technology**
 - Consultant Services**
 - Program Delivery**
 - Planning Department**
 - Procurement Services**
 - d. Work with community, other public and private entities, professional organizations to promote small business utilization through attendance at meeting, workshops and seminars**
 - c. Phone consultation**
 - f. Provide on line FAQ’s**
- (4) Monitoring for data gathering and informational purposes, utilization of SBEs on eligible projects.**

- (5) Maintenance of documents, forms, records or data, regarding this program as provided in this division, including: (a) documents, forms, records or data regarding the dollar amounts subcontracted to or expended for services performed by subcontractors and suppliers on eligible projects, including the SBE status of each subcontractor and supplier; and (b) documents, forms, records or regarding SBEs.

The Equal Opportunity Office may act as a resource for information on GDOT contracting and procurement activity to assist in getting the outreach to SBE to take advantage of GDOT business opportunities.

Procedures to ensure that SBEs have an equitable opportunity to compete for contracts and subcontracts in accordance with of Section 26.39 Fostering Small Business Participation:

GDOT will utilize, but not limited to the following measures to ensure maximum practicable opportunities for SBE participation on GDOT contracts.

- a. Encourage and *promote* prime contractors to waive bonding or assist SBEs subcontractors in obtaining bonding;
- b. Encouraging and *promote* staged bonding where feasible, when bonding is carried over from one project stage to the next; and
- c. *GDOT has identified one hundred and twenty-one (121) projects in FY 2013 through its Transportation Enhancement (TE) Program that are valued at under \$500,000. The Transportation Enhancement (TE) Program projects vary in size, scope, location and specialty. The TE Projects are small enough to allow for the small business contractors to bid as a prime. (However, TE projects are not to be considered as a set aside)*
- d. Provide information on the GDOT's organization and contractual needs and offer instructions on bid specifications, procurement policy, procedures, and general bidding requirements;

- e. Provide specifications and requests for proposals to the SBE community in a timely manner to allow SBEs adequate time to develop responsible and responsive bids. In instances where the cost of obtaining specifications or requests for proposal is prohibitive, copies of the material will be made available at no charge to SBE development agencies;
- f. Encourage Primes to prorate payment and delivery schedules where feasible, to minimize cash flow problems faced by small firms. GDOT will provide guidance to SBE contractors regarding maintenance of positive flow in order that current obligations can be met;
- g. Use debriefing sessions to explain why certain bids were unsuccessful.
- h. Maintain records showing specific efforts to identify and award contracts to SBEs and establish a monitoring system to ensure that all contractors, subcontractors, consultants, and vendors comply with contract specifications related to SBE utilization; and
- i. Inform SBEs of bid notices and specifications related to their capability by placing bid notices in major local newspapers and other periodicals. Bid notices may also be sent to local trade associations, technical assistance agencies, economic development groups, and SBEs with capabilities that may be relevant to the bid notice as identified. Bid specifications may be made available to SBE contractor associations and technical assistance agencies. Lists of potential firms bidding as primes may also be made available to SBEs.

Prime Contractors Assurance and Good Faith Effort

Any federal contractor receiving a contract with GDOT shall agree in the contract that small businesses will have the maximum practicable opportunity to participate in the contract consistent with its efficient performance. Furthermore, Contractor shall show Good Faith Effort in soliciting and accepting bids from small businesses. Prime contractors shall maintain records on all subcontracting performed by SBE in all areas including, construction, professional services or material procurement.

Federal Sub Recipient Assurance

In accordance with the federal guidelines Section 26.39 Fostering Small Business participation all federal sub-recipients including cities, counties, Metro Planning Organization (MPO), will be expected to ensure that they comply with the utilization of small businesses program.

Monitoring and Accountability

The Small Business Program is all race and gender neutral. The program will be monitored annually by the data submitted from the Prime and subcontracts awards and commitments. The GDOT staff will prepare a report on the utilization of all firms in the program. The Small business prime contracting and sub-contracting data will come from the various GDOT recording modes which will include Information Technology, Transport System and CMIS, contract bidding and administration, consulting services and procurement and the Civil Right Labor Management System (CRLMS).

GDOT will request locally government administered project that are federally funded to maintain contacting information in support of the GDOT Small Business Enterprise Program Policy. District Project Managers and District Project Engineers shall continually maintain and compile annual information regarding utilization of small owned businesses. During the course of the contract period GDOT will request contractors to report the amount paid to each small sub-contractor in all areas of service including but not limited to consultant services, construction, supplies, materials and equipment.

Falsification of SBE status:

The Office of Equal Opportunity maintains the right to reject the SBE eligibility of any business providing a SBE notification under SBE regulations to qualify as a small business. If, it is determined that a business submitted a false notification, letter, or documents of its SBE status, GDOT reserves the right to apply sanctions to remove the firms eligibility and other sanction which include, but not limited to, denial of bidding opportunities, suspension , or removal from GDOT bidders list.

GDOT will require all businesses to be honest and truthful when providing on line information about the business. Any attempts to provide false, deceptive or fraudulent information in the application process shall be considered a reason for removal from ineligibility to bid on GDOT projects.

If, a determination is made to suspend or debar the business, GDOT shall provide a written notice of the suspension, which shall be sent by certified mail, return receipt requested, to the contractor. Such notice shall state that:

- If, there is a suspension, the period of the suspension will be noted in written form.**
- Bids or proposals will not be solicited from the suspended or debarred contractor, and, if they are received, they will not be considered during the period of suspension.**

Provide training sessions for SBEs will be available to interested business representatives to explain (in detail) instructions for preparation of bid specifications, procurement policies, procedures and general bid requirements.

Provide coordination and referral to existing business development organizations. Sponsor workshops and training sessions on identified SBE problem areas, i.e., pricing and estimating, joint venture formation, accounting principles, marketing, etc.

Joint Ventures for SBE

Based upon the project and scope of work GDOT will consider a joint venture of large and small business collaborations. The Joint venture would have to be approved in advance by GDOT to ensure a commercially useful function and work value to the small business.

A written joint venture agreement must be completed by all parties to the joint venture and executed before a notary public, which clearly delineates the rights and responsibilities of each member or partner, complies with any requirements of the office of contract compliance as set forth in bid documents or otherwise, and provides that the joint venture shall continue for, at a minimum, the duration of the project.

- (1) The initial capital investment of each venture partner;
- (2) The proportional allocation of profits and losses to each venture partner;
- (3) No SBE venture partner's liability should ever exceed said partners percentage of revenue earned while a participant in the joint venture;
- (4) The sharing of the right to control the ownership and management of the joint venture;
- (5) Actual participation of the venture partners on the project;
- (6) The method of and responsibility for accounting;
- (7) The method by which disputes are resolved;
- (8) Any additional or further information required by the Office of Equal Opportunity contract compliance as set forth in bid documents or otherwise.

Joint ventures may submit agreements for pre-approval no later than 14 calendar days prior to the date set for receipt of bids on a project. Otherwise, agreements must be submitted on or before the date set for receipt of bids on an eligible project. A bid submitted by a joint venture that does not include a satisfactory written joint venture agreement in accordance with the requirements of this section shall be deemed non-responsive and rejected.

Means to Ensure that Bidders makes Good Faith Efforts

To demonstrate sufficient "good faith efforts" to utilize SBEs on contracts, a bidder/proposer shall document the steps it has taken to obtain SBE participation. Such documentation may include evidence of the following:

- (1) Attendance at a pre-bid meeting, if any, scheduled by the city to inform SBEs of subcontracting opportunities under a given solicitation;
- (2) Advertisement in general circulation media, trade association publications, email listing and other media;
- (3) Written notification to SBEs that their interest in the contract is solicited;

- (4) Efforts made to select portions of the work proposed to be performed by SBEs;
- (5) Good faith efforts to negotiate with SBEs for specific subcontracts, including without limitation:
- a. The names, addresses, and telephone numbers of SBEs that were contacted;
 - b. A description of the information provided to SBEs regarding the plans and specifications for portions of the work to be performed;
 - c. A statement of why additional agreements with SBE were not reached;
 - d. Concerning each SBE, the SBE contacted but rejected as unqualified, and the reasons for the bidder's conclusion; and
 - e. Efforts made to assist the SBEs contacted that needed assistance in obtaining bonding or insurance required by the bidder.

Definitions:

The following words, terms and phrases, when used in the SBE Program shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning:

Bid shall mean a quotation, proposal, sealed bid or offer to perform or provide labor, materials, supplies or services to GDOT for a price on eligible projects or services.

Bidder shall mean any individual, sole proprietorship, partnership, joint venture, or corporation that submits a bid to the GDOT.

Commercially Useful Function (CUF): For the purpose of determining whether a business enterprise is performing a commercially useful function:

- (1) *"Be responsible for execution of the work of the contract or a distinct element of the work . . . by actually performing, managing, and supervising the work involved."*
- (2) Be monitored for evaluation of the amount of work subcontracted, whether it is consistent with normal industry practices;
- (3) Determine whether the amount the firm is paid under the contract is commensurate with the work that is actually being performed to be credited towards the goal;
- (4) Evaluate when the SBE furnishes materials, the SBE must be responsible for negotiating the price, for determining the quality and quantity of the material, ordering the material and paying for it. As a contractor a SBE firm would typically be contracted to furnish and install or just to install an item in the contract.
- (5) The SBE's role cannot be limited to that of an extra participant in a transaction, contract, or project through which funds are passed through in order to obtain the appearance of SBE participation. In essence, was the role merely a contrived arrangement for the purpose of meeting the SBE contract goal?
- (6) A SBE must have a necessary and useful role in the transaction, of a kind for which there is a market outside the context of the program. The firm's role must not be a superfluous step added in an attempt to obtain participation credit towards the SBE program.

Control

For a SBE-owner to be deemed to control the potential SBE, the potential SBE must be independent. An independent business enterprise is a business whose viability does not depend on its relationship with another firm or firms.

- (a) In determining whether a potential SBE is independent, GDOT may scrutinize the SBE's relationships with other firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(b) GDOT may consider whether present or recent employer/employee relationships between the SBE-owner and other firms or persons associated with other firms compromise the independence of the potential SBE.

The SBE owner must have an overall understanding of, and managerial and technical competence and experience directly related to the type of business in which the business enterprise is engaged and the business enterprise's operations. The SBE-owner is not required to have experience or expertise in every critical area of the business enterprise's operations, or to have greater experience or expertise in a given field than managers or key employees. The SBE-owner must have the ability to intelligently and critically evaluate information presented by other participants in the business enterprise's activities and to use this information to make independent decisions concerning the business enterprise's daily operations, management, and policymaking.

Joint Venture shall mean an association of two or more persons, partnerships, corporations, or any combination of them, established to carry on a single business activity that is limited in scope and duration. The agreement establishing the joint venture, partnership or other multi-entity relationship shall be in writing. Further, participation in a joint venture shall be based on the sharing of real economic interest in the venture and shall include proportionate control over management, interest in capital acquired by the joint venture and interest in earnings.

NAICS - North American Industry Classification System - A six digit classification code assigned to the industry Small Business Size Standards matched to NAICS

SBA Certification shall mean an affirmative representation that a business meets the qualifications and criteria of a small business as set forth by the small business administration. In association with 13 C.F.R. PART 121—SMALL BUSINESS SIZE REGULATIONS

Supplier shall mean a warehouse or manufacturer of materials, supplies or equipment which contracts directly with a bidder to provide such materials, supplies or equipment on an eligible project which involves a trade or service. For purposes of measuring the total contract dollars awarded or paid to suppliers on eligible projects, only amounts paid to suppliers of goods customarily and ordinarily used based upon standard industry or trade practices shall be counted

Implementation of Georgia Small Business Program:

Once the GDOT gets approve of the Small Business Program implementation will take at least five months for the following activity: Anticipated five months December 2012



GDOT Publications

Policies & Procedures

Policy: 8201-1- Disadvantaged Business Enterprise (DBE)

Goal Evaluation

Section: DBE/WBE

Office/Department: Deputy Commissioner

Reports To: Department of Transportation

Contact: 404-631-1000

The purpose of this document is to define the internal procedures used to evaluate Contract DBE Goals and contractor DBE Commitments for construction projects in Georgia Department of Transportation (GDOT) administered lettings.

Contract DBE Goal

The Disadvantaged Business Enterprise (DBE) overall goal setting methodology is a requirement set forth in the United States Department of Transportation (USDOT) DBE regulations, 49 CFR Part 26.45. The DBE regulations require USDOT recipients to set an annual overall goal for DBE participation in their federally assisted projects.

GDOT's overall goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on DOT-assisted contracts. Based upon evidence collected, tabulated and analyzed in the Agency's most recent disparity study, our goal reflects our determination of the level of DBE participation expected absent the effects of discrimination. GDOT's goal provides for participation by all certified DBEs; therefore, we do not subdivide into group-specific goals.

GDOT uses race conscious numerical DBE goals on contracts to meet any portion of the overall goal that it does not project will be met using race/gender neutral means. Race conscious DBE goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of its overall goal that is not projected to be met through the use of race/gender neutral means. For the purpose of this policy, *race-conscious* is applicable when a business is used to meet the Contract DBE Goal because it is certified as a DBE. *Race-neutral* is applicable when a DBE is awarded a prime contract, used as a subcontractor when there is no Contract DBE Goal, or used in addition to the DBEs or dollars committed to in the contract.

GDOT establishes race conscious goals only on those USDOT-assisted contracts that have subcontracting opportunities and DBE availability in the subcontracting areas. However, GDOT need not establish a numerical DBE goal on every such contract. Contract goals are adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

GDOT expresses its race conscious goals as a percentage of the engineer's overall estimate for the contract.

Staff responsibility for the preparation of the proposed Contract Goal is assigned to the Director within the Office of Equal Employment Opportunity (EEO).

Contract DBE Goal Setting

GDOT's process is established in consideration of the guidance provided by USDOT in "[Tips for Goal-Setting in the Disadvantaged Business Enterprise \(DBE\) Program](#)," (June 25, 2013) for setting a State's overall DBE Goal.

The process establishes Local Market Areas, which are based upon the Georgia Regional Commissions' designation of geographic areas of the state into specific regions. The Local Markets are the geographical areas chosen by the contractors and subcontractors as the general locations in which they are willing to work. The formula considers an Availability Factor of the ready, willing, and able DBEs

Policy: 8201-1 - Disadvantaged Business Enterprise (DBE) Goal Evaluation

Date Last Reviewed: 11/18/2013

Page 1 of 5

and non DBEs that are currently registered and/or prequalified to do work with GDOT within the defined Work Codes and Local Market. For the purpose of this policy, "registered" is referring to an approved subcontractor, "prequalified" is referring to an approved prime contractor, and "certified" is referring to an approved DBE.

Option 1 - Base Figure

- A Work Code is a code assigned to a contract line item. Example: 400 is asphalt paving, 653 is highway traffic striping. The Work Codes were established and predefined by a GDOT Committee comprised of the Office of EEO, Construction, Bidding Administration, and Prequalification, in 2012. Not every item has a work code, only those items that are predominantly used on Highway construction projects. Contractors and Subcontractors in the GDOT directories are assigned work codes based upon their work description. Work codes are the most refined data available.
- A Work Code Estimate is the sum of all line item Costs with the same first 3 digits of an item code which matches the work code number. Item Code is a code assigned to an item description. Example: Work Code 653 includes 653-1501 Thermo Traffic Stripe, white 5 in., and 653-1502 Thermo Traffic Stripe, yellow 5 in.
- Ready, willing, and able DBEs are those firms that are certified as a DBE, as well as registered and/or prequalified to do work with GDOT in a defined Work Code and the Local Market for which the project is located.
- Ready, willing, and able contractors and subcontractors are those firms that are registered and/or prequalified to do work with GDOT in a defined work code and the Local Market for which the project is located.
- Subcontract Market is the sum of the work code estimates, which defines subcontracting opportunities on the project being reviewed. Subcontracting opportunities shall not exceed 70% on all projects except for resurfacing projects which is limited to 30%. Whereas, Contract Specification 108 states in part, the Prime contractor *shall perform, with his/her own organization, work amounting to not less than thirty percent (30%) of the total Contract cost, including materials, equipment, and labor.*
- Overall DBE Availability is the results from formula shown below:

The base figure is calculated in each work code by dividing the number of DBEs ready, willing, and able to bid by the number of all firms (DBEs and non-DBEs) ready, willing, and able to work in that work code. That is, the number of DBEs will be in the numerator, and the number of all firms (DBEs and non-DBEs) will be in the denominator.

$$\text{Base Figure} = \frac{\text{Ready, Willing and Able DBEs in work code}}{\text{All firms ready, willing, and able in work code (Including DBEs and Non DBEs)}}$$

The availability is weighted to ensure that the Option #1 Base Figure is as accurate as possible. For instance, if 60% of your contract dollars will be spent on asphalt paving, 20% on highway striping, 10% on erosion control, and 10% on grassing, the formula weights the calculation of the relative availability of firms by the same percentages. In other words:

$$[.60(\# \text{ of Asphalt Paving DBEs} / \# \text{ of All Asphalt paving construction firms}) + .20(\# \text{ of Highway Striping DBEs} / \# \text{ of All Highway Striping firms}) + .10 (\# \text{ of Erosion Control DBEs} / \# \text{ of All Erosion Control firms}) + .10(\# \text{ of Grassing DBEs} / \# \text{ of All Grassing firms})] = \text{Overall DBE Availability Factor}$$

The Overall DBE Availability Factor is multiplied by the Subcontract Market to establish the **DBE Goal amount** (dollar value).

The **Overall DBE Proposed Goal percent** is computed by dividing the DBE Goal Amount by the Engineer's Total Cost Estimate.

Example

Project in Crawford County- Middle Georgia Region 7,

- Overall Estimate= \$5,278,834.25
- Subcontract Market (Opportunities) = \$2,756,918.00

Project has items associated to Work codes: 150 Traffic control, 163 Erosion control, 310 Graded Aggregate Base, 441 Miscellaneous Concrete, 500 Concrete Structures, 507 Concrete Bridge Members, 511 Reinf Steel, 524 Drilled Caissons, 550 Strm Pipe, 636 Highway Signs, 641 Guardrail, 643 Wire Fence, 653 Thermo Striping, 668 Drainage, and 700 Grassing.

- In work Code 150 there are 5 DBEs, and 14 Total Firms (including DBEs) with an estimate of \$53,000
- In work Code 163 there are 14 DBEs, and 16 Total Firms (including DBEs) with an estimate of \$115,680
- In work Code 310 there are 2 DBEs, and 12 Total Firms (including DBEs) with an estimate of \$134,359
- In work Code 441 there are 19 DBEs, and 146 Total Firms (including DBEs) with an estimate of \$44,035
- In work Code 500 there are 11 DBEs, and 27 Total Firms (including DBEs) with an estimate of \$1,105,826
- In work Code 507 there are 0 DBEs, and 4 Total Firms (including DBEs) with an estimate of \$685,096
- In work Code 511 there are 3 DBEs, and 7 Total Firms (including DBEs) with an estimate of \$290,230
- In work Code 524 there are 0 DBEs, and 2 Total Firms (including DBEs) with an estimate of \$151,444
- In work Code 550 there are 9 DBEs, and 119 Total Firms (including DBEs) with an estimate of \$44,545
- In work Code 636 there are 6 DBEs, and 57 Total Firms (including DBEs) with an estimate of \$12,009
- In work Code 641 there are 6 DBEs, and 8 Total Firms (including DBEs) with an estimate of \$68,724
- In work Code 643 there are 7 DBEs, and 9 Total Firms (including DBEs) with an estimate of \$20,199
- In work Code 653 there are 1 DBEs, and 3 Total Firms (including DBEs) with an estimate of \$6,668
- In work Code 668 there are 6 DBEs, and 9 Total Firms (including DBEs) with an estimate of \$3,370
- In work Code 700 there are 8 DBEs, and 11 Total Firms (including DBEs) with an estimate of \$21,730

WORK CODE	DBE/ ALL FIRMS	DBE AVAILABILITY	WC EST/ ENG COST ESTIMATE	WEIGHT FACTOR	WEIGHT x DBE AVAILABILITY
150	5/14	0.357143	53000/2756918	0.0192	0.006866
163	14/16	0.875	115680/2756918	0.0420	0.036715
310	2/12	0.166667	134359/2756918	0.0487	0.008123
441	19/146	0.130137	44035/2756918	0.0160	0.002079
500	11/27	0.407407	11105826/2756918	0.4011	0.163415
507	0/4	0	685096/2756918	0.2485	0
511	3/7	0.428571	290230/2756918	0.1053	0.045117
524	0/2	0	151444/2756918	0.0549	0
550	9/119	0.07563	44545/2756918	0.0162	0.001222
636	6/57	0.105263	12009/2756918	0.0044	0.000459
641	6/8	0.75	68724/2756918	0.0249	0.018696
643	7/9	0.777778	20199/2756918	0.0073	0.005699
653	1/3	0.333333	6668/2756918	0.0024	0.000806
668	6/9	0.666667	3370/2756918	0.0012	0.000815
700	8/11	0.727273	21730	0.0079	0.005732
			TOTAL	100%	
			Overall DBE Availability in Project's Subcontract market		0.2957

Subcontract Market Value x DBE availability = **DBE Goal Amount** (\$2,756,918 x 0.2957= \$815,220)

DBE Goal amount / Engineers Total Cost Estimate= **DBE Goal Percent** (\$815,220 / \$5,278,834.25 = **15%**)

Policy: 8201-1 - Disadvantaged Business Enterprise (DBE) Goal Evaluation

Date Last Reviewed: 11/18/2013

Page 3 of 5

Option 2 - Past Participation

- Adjust the Base Figure, if necessary. Determine Contract DBE Goal based on past methodology. In the event the Base Figure is known to contain imbalanced or improper data, the Past Participation goal may be approved without consideration of the base figure. Likewise, if the Base Figure is determined to be sound and appropriate it may be approved without adjustment.

Factors considered in the Past Participation methodology include, but are not necessarily limited to:

1. Engineer's Estimate : Major > \$1,000,000; Minor < \$1,000,000
2. Location of Project: Urban, Rural
3. Type of project:
 - General Construction : Urban Major 12%; Urban Minor 9%; Rural Major 10%; Rural Minor 6-10%
 - Streetscape: Major 12%; Minor 0-10%: <\$50 K = 0%; \$250K<>\$500K=8%; \$500<> \$1M= 10%
 - Turn Lanes: 12%
 - Intersection Improvements: Major 9%; Minor 5%
 - Specialty Construction:
 - a. Bridges: Urban 9%; Rural = 7-9% >\$500K; 5% < \$500K
 - b. Bridge Deck replacement: 6%
 - c. Buildings : Urban 20%, Rural 7%
 - d. Concrete Rehab: 6%
 - e. Culverts: 5%
 - f. Fencing: 20%
 - g. Grinding: 5%
 - h. Guardrail: 11%
 - i. Landscaping: 11%
 - j. Lighting: Urban 11%; Rural 7%
 - k. Resurfacing: 5-7%
 - l. Sealing Joints: 0-5%
 - m. Signs: 9%
 - n. Traffic Signals: Urban 9%; Rural 6-9%
 - o. Traffic Striping: 11%
 - p. Utility items in the contract (certain items such as natural gas, electric transmission and distribution, telecommunications need to be excluded from the overall \$ amount of the other pay items)

Director of EEO

Director of EEO shall provide the contract proposed DBE goals to the DBE Goal Review Committee.

State Transportation Office Engineer

The State Transportation Office Engineer is responsible for sending a list of all project numbers with their primary counties, and the engineer's estimate to the Director of EEO, seven (7) calendar days prior to goal review committee meeting.

DBE Goal Review Committee

The Goal Setting Committee shall consist of the EEO Rep, Director of Construction, Chief Engineer, Director of Engineering, Director of Operations & Permits, Deputy Commissioner and other members as appointed by the Deputy Commissioner.

The Goal Setting Committee shall meet prior to each letting and review the proposed goal. The Goal Setting Committee will accept or modify the proposed goal as appropriate.

DBE Commitment Bid Review Committee

The Commitment Bid Review Committee shall consist of the State Transportation Office Engineer, Contract Review Engineer, and the Director of EEO. The Bid Review Committee shall meet after each letting to review the low bidders proposed DBE commitments.

The Commitment Bid Review Committee shall review each low bidder's proposed DBE vendors. The Director of EEO will verify the availability of each individual DBE. In the event a DBE is found to be unavailable, the State Transportation Office Engineer will contact the low bidder concerning the circumstances of the availability. The bidder will be offered an opportunity to adjust the proposed list.

If the low bidder fails to correct the proposed list, the issue shall default to Standard Spec 102.07.H requirements for Failure to List Disadvantaged Business Enterprise (DBE) Participants. If the contract has an established DBE goal, the Department reserves the right to reject and disqualify any proposal if the bidder has failed to list bona fide DBE participants with sufficient participation to achieve at least the established goal. The Department may consider for award a proposal with less participation than the established goal if both:

- The bidder can demonstrate that no greater participation could be obtained and;
- The participation proposed by the low bidder is not substantially less than the participation proposed by the other bidders on the same contract

References:

[Click here to enter Policy references, if any.](#)

History:

new policy added to Publications: 11/18/13

Reviewed: 11/18/2013



DBE Joint Check Request Form

Contractor Information:

Name of DBE Subcontractor: _____
 Name of Prime Contractor: _____
 Name of Material Supplier: _____

Contract Information:

Contract No. _____
 Item No. _____
 Project: _____
 Route: _____
 Section: _____
 County: _____
 Date: _____

Who requested joint check utilization:

- Prime Sub Supplier

Reason for request: _____

The Georgia Department of Transportation will monitor the use of joint checks. To receive DBE credit for performing a commercially useful function with respect to obtaining materials and supplies a DBE must "be responsible for negotiating price, determining quality and quantity, ordering the material and installing (where applicable) and paying for the material itself". Only when a DBE meets all requirements should goal credit be counted for the procurement of items by the DBE.

Please refer to the attached Joint Check Policy & Procedures. If the proper procedures are not followed or the department determines that the arrangement results in a lack of independence for the DBE involved, no goal credit for the DBE's participation as it relates to the material cost will be used toward the contract goal requirement and the prime will be held responsible for not meeting this goal.

I have read and understand the above information and the attached Joint Check Policy & Procedures. I hereby acknowledge that the information provided on this form is true and accurate.

Authorized Subcontractor Representative:		
Signature	Title	Date
Authorized Material Supplier Representative:		
Signature	Title	Date
Authorized Prime Contractor Representative:		
Signature	Title	Date

GDOT USE ONLY	
Date Received:	DBE Admin:
Documentation Attached:	
Comments:	
Approved:	Date:
Denied:	Date:

Use of Joint Checks

If approved, GDOT's approval will automatically expire at completion of the subject project. Approvals will not be granted for projects awarded prior to October 1st, 2015.

The following outlines The Georgia Department of Transportation's policy and guidelines regarding the use of joint checks under the Disadvantaged Business Enterprises (DBE) program.

Regarding this policy, a joint check is a two-party check between a DBE, a prime contractor and the regular dealer of material/supplies or another third party for items or service to be incorporated into a project. The prime contractor issues the check as payer to the DBE and the supplier jointly (to guarantee payment to the supplier) in payment for the material/supplies used by the DBE.

The department must closely monitor the use of joint checks to ensure that its use does not inhibit the DBE from providing a CUF in accordance with 49 CFR 26.55, provide the opportunity for the DBE to serve as an "extra participation in a transaction, contract or project through which funds are passed in order to obtain the appearance of DBE participation" (49 CFR 26.55), or conflict with other aspects of the DBE program regulations.

Joint Check Process

To obtain approval for the use of joint checks, the DBE must submit the following to the Prime:

1. A denial of credit from the supplier.
2. A signed statement from the supplier affirming their relationship with the DBE was established independent of the prime contractor.
3. A written explanation from the DBE of how it will maintain control over the work.
4. The DBE Joint Check Request Form.

The Prime Contractor must submit the following to the Department.

1. DBE Joint Check Agreement Affidavit
2. The physical (signed) Subcontract between the Prime and DBE
3. Copies of all DBE submittals listed above.
4. The Joint Check Agreement between the Supplier, DBE, and Prime Contractor.

During active work phase the Prime must submit to the Department the following:

5. Copies of cancelled check (Front and Back) after the joint check transaction within 30 days of the checks issued date. Electronic transfer will not be allowed. The check must be for the cost of the materials only. Upon receipt, the DBE must immediately endorse the check over to the supplier. A copy of the invoices from the supplier to the DBE must accompany the cancelled check.

Department's Role:

- A. Determine the independence of the DBE. Independence is when the DBE has retained full decision-making responsibility concerning the procurement of materials and supplies, even when joint checks are involved.
- B. Whether the relationship between the DBE and its suppliers was established independent of

the prime contractor.

- C. Ensure that the form is filled out completely, with all signatures, the procedures are followed, and all supporting documentation necessary is attached.
- D. Investigate allegations of misuse, abuse or fraud in the use of joint checks.
- E. Notify the prime contractor in writing of any conditions of non-compliance.
- F. The Office of EEO will provide a recommendation to the District Construction Engineer. The District Construction Engineer will approve or deny the Joint Check agreement.

Contractor's Role:

- A. Joint checks must be made available to all subcontractors.
- B. No exclusive relationships with one DBE concerning the use of joint checks to bring into question independence.
- C. The uses of joint checks are focused on accomplishing the procurement of materials needed for a particular purpose at a particular time.
- D. Agreements are short term, not to exceed reasonable time, to establish/increase a credit line with the material supplier.

The following are general circumstances that must be present to support the use of joint check:

- A. Standard Industry Practice applies to all contractors (federal and state contracts).
- B. Material industry sets the standard industry practice, not the prime contractors.
- C. Non-proportionate ratio of DBE's normal capacity to size of contract and quantity of material to be provided under the contract.
- D. DBE is normally responsible for both to install and furnish work item.
- E. DBE must be more than an extra participant in releasing the check to the material supplier.

The following are general conditions that must be met for the department to allow the use of joint checks:

- A. DBE submits request to the department for action (DBE Joint Check Request Form).
- B. Subject of formalized agreement between all parties specify the conditions under which the arrangement will be permitted.
- C. Full and prompt disclosure of the expected use of joint checks.
- D. Require prior approval.
- E. Even with joint checks, DBE remains responsible for all other elements of 49 CFR 26.55 (c)(1).
- F. Department clearly determines that independence is not threatened because the DBE retains final decision making responsibility.
- G. Department clearly determines that request is not an attempt to artificially inflate DBE participation.
- H. Standard industry practice is only one factor.
- I. No requirement by prime contractor that DBE is to use a specific supplier nor the prime "contractors" negotiated unit price.
- J. The subcontract must require the DBE to furnish and install the work item. If the DBE cannot furnish the materials, the Prime has the option to substitute the DBE under the grounds of default of the subcontract agreement, or apply only the cost of labor toward the DBE goal. However, the overall project goal amount does not change.

Georgia Department of Transportation
Prime Contractor
DBE JOINT CHECK AFFADAVIT

Date: _____

Project: _____ County: _____

I, _____, as the authorized representative of _____ am requesting DBE credit for joint check purchases of materials. Our firm provides joint check agreement assistance to all our subcontractors not just DBEs. The physical subcontract requires the DBE to furnish and install the work item. The DBE firm will be responsible for ordering, scheduling, delivering, and issuing payment for the materials to its supplier. We will provide copies of all cancelled checks (Front and Back) after the joint check transaction within 30 days of the checks issued date to the Department. Electronic transfers will not be allowed. A copy of the invoices from the supplier to the DBE will accompany the cancelled check. The check will be for the cost of the materials only. Upon receipt, the DBE will immediately endorse the joint check over to the supplier. We further understand the Joint Check agreement is for this project only. In the event this request is approved, this project will be under increased scrutiny by the Department and FHWA. We understand we are responsible for determining the DBE's commercially useful function status while working on the project. If the joint check agreement is not approved, credit for the cost of materials will not be credited toward the project's DBE goal. We understand the below federal regulation, its implications, and have provided the DBE subcontractor with a copy of the regulation.

49 CFR §26.107

(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.

Signature and Title

Required Attachments: (If one item is missing, DBE credit approval will not be granted).

1. The physical (signed) subcontract between the Prime and DBE.
2. A written denial of credit from the supplier to the DBE for the subject project.
3. A signed statement from the supplier affirming their relationship with the DBE was established independent of the prime contractor.
4. A written explanation from the DBE of how it will maintain control over the work.
5. Copy of the proposed Joint Check Agreement between Prime, proposed by the DBE and Supplier.
6. The DBE Joint Check Request Form to the Department.

**COMMERCIALLY USEFUL FUNCTION (CUF)
PROJECT SITE REVIEW (CONSTRUCTION PROJECTS)**

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". It is the primary responsibility of the Prime Contractor to ensure that the DBE is performing a CUF. The Department, as the contracting agency, has oversight responsibility to ensure that the Prime Contractor has effectively met this responsibility under its contract with the Department.

- Document a minimum of one review for each DBE for each project with a DBE goal. File the completed form in the official project records with the applicable DBE report. The review should be started when the DBE first begins work and is not complete until the DBE has received a payment. Continue to monitor compliance through the course of the project. Use the CUF form to document any further noted concerns or inconsistencies. Contact the District EEO Officer if you believe a DBE may not be performing a Commercially Useful Function (CUF), or if you have any questions related to the program. This form does not document every possible question or concern. Monitoring the DBE for CUF is a continuous process through the life of the project.

Project Number: County: Prime Contractor:	GDOT Reviewer: Contractor's Representative Interviewed: Review Date:
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DBE Name: _____

DBE is performing as a Contractor: The Prime Contractor A Subcontractor A Tier Subcontractor

DBE is performing as a Material Supplier: A Manufacturer A Regular Dealer A Broker

Scope of Work
Provide a brief description of the DBE's scope of work. (Refer to Subcontract Agreement and/or Purchase Order if needed.)

	YES	NO
A. Prime Contractor Interview and Subcontract Approval		
1. Does the Prime Contractor have a process in place to substantiate the DBE's CUF and the allowable credit toward the DBE goal in the Contract?	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the DBE only using equipment it owns, rents, or leases? (Obtain copies of all rent or lease agreements).	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the DBE performing <i>at least</i> 30% of their work described in the subcontract?	<input type="checkbox"/>	<input type="checkbox"/>
4. Does the DBE hauling firm own or lease their trucks? (Obtain copies of lease agreements, if applicable).....(NA <input type="checkbox"/>)	<input type="checkbox"/>	<input type="checkbox"/>
B. Field Observations during work inspection and Payroll Inspection		
1. Is the DBE firm supervising its employees and their work?	<input type="checkbox"/>	<input type="checkbox"/>
2. Is the supervisor a full-time employee of the DBE?	<input type="checkbox"/>	<input type="checkbox"/>
3. Is the DBE working without assistance from the prime contractor or another subcontractor? (Use of prime's equipment in an emergency is allowed but the cost associated with the use of the equipment cannot be credited towards the goal.)	<input type="checkbox"/>	<input type="checkbox"/>
4. Are DBE leased trucks properly placard?	<input type="checkbox"/>	<input type="checkbox"/>
C. Labor Interviews		
1. Does the DBE have employees on the job to perform the work?	<input type="checkbox"/>	<input type="checkbox"/>
2. Do the DBE's employees only work for the DBE?	<input type="checkbox"/>	<input type="checkbox"/>
D. Material Invoice Inspection		
1. Does a review of the haul tickets associated with the project indicate that hauling is being performed by the DBE?.....(NA <input type="checkbox"/>)	<input type="checkbox"/>	<input type="checkbox"/>
2. Does the DBE's name appear on all invoices, haul tickets, and/or bills of lading?	<input type="checkbox"/>	<input type="checkbox"/>
E. Commensurate		
1. Is Payment received by the DBE comparable with the work being performed? (Comparison of DBE report, canceled checks, subcontract, and inspection pay reports).	<input type="checkbox"/>	<input type="checkbox"/>
F. Joint Checks... (if applicable)		
1. Is the Prime paying the DBE and the DBE's Supplier with one check?	<input type="checkbox"/>	<input type="checkbox"/>
2. Has the Department approved the use?	<input type="checkbox"/>	<input type="checkbox"/>
G. CUF		
1. Does the DBE appear to be performing a Commercially Useful Function (CUF)? (If no, provide comments and contact your District EEO Officer at _____)	<input type="checkbox"/>	<input type="checkbox"/>

COMMENTS: if any response recorded in section A- E is "no", comments explaining the "no" are mandatory. Attach a 2nd page if necessary.

COMMERCIALLY USEFUL FUNCTION (CUF)
PROJECT SITE REVIEW (CONSTRUCTION PROJECTS)

GDOT EEO 5/2014
Rev. 7/2015

CUF DETERMINANTS

PERFORMING

- a. DBE must be responsible for performing its own work on the project
- b. At least 30% of the work must be performed by the DBE with its own workforce
- c. The DBE keeps a regular workforce and has its own employees
- d. The DBE is utilizing its own equipment
- e. Operation of the equipment must be subject to the full control of the DBE

RED FLAGS

- A portion of the DBE's work being done by the Prime Contractor or jointly with another contractor
- Employee working for both the Prime and the DBE
- Equipment used by DBE belongs to the Prime Contractor or another contractor with no formal lease agreement
- Equipment signs and markings cover another contractor's identity

RECORDS/DOCUMENTS

- Subcontract Agreement or Purchase Order
- Equipment ownership, rental, or lease documents
- Certified payrolls

MATERIALS (For material credit)

- a. DBE is responsible for the delivery of the materials
- b. DBE is ordering the material and invoices indicate that DBE is the customer
- c. Material invoices indicate that DBE owner or Superintendent is the contact person
- d. Department has approved use of joint checks

RED FLAGS

- Materials for DBE credited work are delivered by the Prime Contractor
- Materials are ordered, billed to, and/or paid by the Prime Contractor
- Invoices do not indicate that DBE is the customer
- Prime's employee is listed as the contact person on invoices
- Materials come from Prime's stockpiles

RECORDS/DOCUMENTS

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

SUPERVISING

- a. DBE supervisor is a full-time employee of the DBE
- b. Employees are being supervised by DBE supervisor
- c. DBE is scheduling work operations

RED FLAGS

- DBE's employees are being supervised by Prime Contractor or another contractor
- DBE provides little or no supervision of work
- DBE supervisor is not a full-time employee of the DBE

RECORDS/DOCUMENTS

- Certified Payrolls
- Document communication with DBE owner or Superintendent



Appendix F

UNIFORM CERTIFICATION APPLICATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE) /
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
49 C.F.R. Parts 23 and 26

Roadmap for Applicants

1. Should I apply?

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed \$23.98 million in gross annual receipts for DBE (\$52.47 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

2. How do I apply?

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

3. Where can I send my application? INSERT UCP PARTICIPATING MEMBER CONTACT INFORMATION

4. Who will contact me about my application and what are the eligibility standards?

The DBE and ACDBE Programs require that all U.S. Department of Transportation (DOT) recipients of federal assistance participate in a statewide Unified Certification Program (UCP). The UCP is a one-stop certification program that eliminates the need for your firm to obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs for DOT grantees, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

5. Where can I find more information?

U.S. DOT—<https://www.civilrights.dot.gov/> (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS):
<http://www.census.gov/eos/www/naics/> and <http://www.sba.gov/content/table-small-business-size-standards>.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 CFR §26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 CFR §23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

Under 49 C.F.R. §26.107, dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 2 CFR Parts 180 and 1200, Nonprocurement Suspension and Department, take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.



INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE) UNIFORM CERTIFICATION APPLICATION

NOTE: All participating firms must be for-profit enterprises. If your firm is not for profit, then you do NOT qualify for the DBE/ACDBE program and should not complete this application. If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

- (1) Enter the contact name and title of the person completing this application and the person who will serve as your firm's contact for this application.
- (2) Enter the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) Enter the primary phone number of your firm.
- (4) Enter a secondary phone number, if any.
- (5) Enter your firm's fax number, if any.
- (6) Enter the contact person's email address.
- (7) Enter your firm's website addresses, if any.
- (8) Enter the street address of the firm where its offices are physically located (not a P.O. Box).
- (9) Enter the mailing address of your firm, if it is different from your firm's street address.

B. Prior/Other Certifications and Applications

- (10) Check the appropriate box indicating whether your firm is currently certified in the DBE/ACDBE programs, and provide the name of the certifying agency that certified your firm. List the dates of any site visits conducted by your home state and any other states or UCP members. Also provide the names of state/UCP members that conducted the review.
- (11) Indicate whether your firm or any of the persons listed has ever been denied certification as a DBE, 8(a), or Small Disadvantaged Business (SDB) firm, or state and local MBE/WBE firm. Indicate if the firm has ever been decertified from one of these programs. Indicate if the application was withdrawn or whether the firm was debarred, suspended, or otherwise had its bidding privileges denied or restricted by any state or local agency, or Federal entity. If your answer is yes, identify the name of the agency, and explain fully the nature of the action in the space provided. Indicate if you have ever appealed this decision to the Department and if so, attach a copy of USDOT's final agency decision(s).

Section 2: GENERAL INFORMATION

A. Business profile:

- (1) Give a concise description of the firm's primary activities, the product(s) or services the company provides, or type of construction. If your company offers more than one product/service, list primary product or service first (attach additional sheets if necessary). This description may be used in our UCP online directory if you are certified as a DBE.

- (2) If you know the appropriate NAICS Code for the line(s) of work you identified in your business profile, enter the codes in the space provided.
- (3) State the date on which your firm was established as stated in your firm's Articles of Incorporation or charter.
- (4) State the date each person became a firm owner.
- (5) Check the appropriate box describing the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for profit." **If you checked "No," then you do NOT qualify for the DBE/ACDBE program and should not complete this application.** All participating firms must be for-profit enterprises. If the firm is a for profit enterprise, provide the Federal Tax ID number as stated on your firm's Federal tax return.
- (7) Check the appropriate box that describes the type of legal business structure of your firm, as indicated in your firm's Articles of Incorporation or similar document. Identify all joint venture partners if applicable. If you checked "Other," briefly explain in the space provided.
- (8) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.
- (9) Specify the firm's gross receipts for each of the past three years, as stated in your firm's filed Federal tax returns. You must submit complete copies of the firm's Federal tax returns for each year. If there are any affiliates or subsidiaries of the applicant firm or owners, you must provide these firms' gross receipts and submit complete copies of these firm(s) Federal tax returns. Affiliation is defined in 49 C.F.R. §26.5 and 13 C.F.R. Part 121.

B. Relationships and Dealings with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, financing, or any office staff and/or employees with any other business, organization or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and fully explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or



oral agreement. Provide an explanation of any items shared with other firms in the space provided.

- (2) Check the appropriate box indicating whether any other firm currently has or had an ownership interest in your firm at present or at any time in the past. If you checked yes, please explain.
- (3) Check the appropriate box that indicates whether at present or at any time in the past your firm:
 - (a) ever existed under different ownership, a different type of ownership, or a different name;
 - (b) existed as a subsidiary of any other firm;
 - (c) existed as a partnership in which one or more of the partners are/were other firms;
 - (d) owned any percentage of any other firm; and
 - (e) had any subsidiaries of its own.
 - (f) served as a subcontractor with another firm constituting more than 25% of your firm's receipts.

If you answered "Yes" to any of the questions in (3)(a-f), you may be asked to explain the arrangement in detail.

Section 3: MAJORITY OWNER INFORMATION

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each owner):

A. Identify the majority owner of the firm holding 51% or more ownership interest

- (1) Enter the full name of the owner.
- (2) Enter his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) Enter his/her home (street) address.
- (5) Indicate this owner's gender.
- (6) Identify the owner's ethnic group membership. If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen or a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner.
- (8) Enter the number of years during which this owner has been an owner of your firm.
- (9) Indicate the percentage of the total ownership this person holds and the date acquired, including (if appropriate), the class of stock owned.
- (10) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment. Describe how you acquired your business and attach documentation substantiating this investment.

B. Additional Owner Information

- (1) Describe the familial relationship of this owner to each other owner of your firm and employees.
- (2) Indicate whether this owner performs a management or supervisory function for any other business. If you

checked "Yes," state the name of the other business and this owner's function/title held in that business.

- (3) (a) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business, the nature of the business relationship, and the owner's function at the firm.
 - (b) If the owner works for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week, please identify this activity.
- (4) (a) Provide the personal net worth of the owner applying for certification in the space provided. Complete and attach the accompanying "Personal Net Worth Statement for DBE/ACDBE Program Eligibility" with your application. Note, complete this section and accompanying statement only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged).
 - (b) Check the appropriate box that indicates whether any trust has been created for the benefit of the disadvantaged owner(s). If you answered "Yes," you may be asked to provide a copy of the trust instrument.
- (5) Check the appropriate to indicate whether any of your immediate family members, managers, or employees, own, manage, or are associated with another company. Immediate family member is defined in 49 C.F.R. §26.5. If you answered "Yes," provide the name of each person, your relationship to them, the name of the company, the type of business, and whether they own or manage the company.

Section 4: CONTROL

A. Identify the firm's Officers and Board of Directors

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box to indicate whether any of your firm's officers and/or directors listed above performs a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. (e.g., ownership interest, shared office space, financial investments, equipment leases, personnel sharing, etc.) If you answered "Yes," identify the name of the firm, the individual's name, and the nature of his/her business relationship with that other firm.



B. Duties of Owners, Officers, Directors, Managers and Key Personnel

(1), (2) Specify the roles of the majority and minority owners, directors, officers, and managers, and key personnel who control the functions listed for the business. Submit résumés for each owner and non-owner identified below. State the name of the individual, title, race and gender and percentage ownership if any. Circle the frequency of each person's involvement as follows: "always, frequently, seldom, or never" in each area.

Indicate whether any of the persons listed in this section perform a management or supervisory function for any other business. Identify the person, business, and their title/function. Identify if any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investment, equipment, leases, personnel sharing, etc.) If you answered "Yes," describe the nature of his/her business relationship with that other firm.

C. Inventory: Indicate firm inventory in these categories:

(1) Equipment and Vehicles

State the make and model, and current dollar value of each piece of equipment and motor vehicle held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm or owner, whether it is used as collateral, and where this item is stored.

(2) Office Space

State the street address of each office space held and/or used by your firm. Indicate whether your firm or owner owns or leases the office space and the current dollar value of that property or its lease.

(3) Storage Space

State the street address of each storage space held and/or used by your firm. Indicate whether your firm or owner owns or leases the storage space and the current dollar value of that property or its lease. Provide a signed lease agreement for each property.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," you may be asked to explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial / Banking Information

Banking Information. State the name, City and State of your firm's bank. In the space provided, identify the persons able to sign checks on this account. Provide bank authorization and signature cards

Bonding Information. State your firm's bonding limits (in dollars), specifying both the aggregate and project limits.

F. Sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms guaranteeing the loan.

State the name and address of each source, the name of person securing the loan, original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm. Provide copies of signed loan agreements and security agreements

G. Contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. Current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and issuing State of the license or permit. Attach copies of licenses, license renewal forms, permits, and haul authority forms.

I. Largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. Largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AIRPORT CONCESSION (ACDBE) APPLICANTS

Identify the concession space, address and location at the airport, the value of the property or lease, and fees/lease payments paid to the airport. Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of the concession enterprise.

AFFIDAVIT & SIGNATURE

The Affidavit of Certification must accompany your application for certification. Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

Section 1: CERTIFICATION INFORMATION



A. Basic Contact Information

(1) Contact person and Title: _____ (2) Legal name of firm: _____

(3) Phone #: (____) _____ - _____ (4) Other Phone #: (____) _____ - _____ (5) Fax #: (____) _____ - _____

(6) E-mail: _____ (7) Firm Websites: _____

(8) Street address of firm (No P.O. Box): _____ City: _____ County/Parish: _____ State: _____ Zip: _____

(9) Mailing address of firm (if different): _____ City: _____ County/Parish: _____ State: _____ Zip: _____

B. Prior/Other Certifications and Applications

(10) Is your firm currently certified for any of the following U.S. DOT programs?

DBE ACDBE Names of certifying agencies: _____

⊗ If you are certified in your home state as a DBE/ACDBE, you do not have to complete this application for other states. Ask your state UCP about the interstate certification process.

List the dates of any site visits conducted by your home state and any other states or UCP members:

Date ___/___/___ State/UCP Member: _____ Date ___/___/___ State/UCP Member: _____

(11) Indicate whether the firm or any persons listed in this application have ever been:

(a) Denied certification or decertified as a DBE, ACDBE, 8(a), SDB, MBE/WBE firm? Yes No

(b) Withdrawn an application for these programs, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? Yes No

If yes, explain the nature of the action. (If you appealed the decision to DOT or another agency, attach a copy of the decision,

Section 2: GENERAL INFORMATION

A. Business Profile: (1) Give a concise description of the firm's primary activities and the product(s) or service(s) it provides. If your company offers more than one product/service, list the primary product or service first. Please use additional paper if necessary. This description may be used in our database and the UCP online directory if you are certified as a DBE or ACDBE.

(2) Applicable NAICS Codes for this line of work include: _____

(3) This firm was established on ___/___/___ (4) I/We have owned this firm since: ___/___/___

(5) Method of acquisition (Check all that apply):

- Started new business Bought existing business Inherited business Secured concession
- Merger or consolidation Other (explain) _____



Section 3: MAJORITY OWNER INFORMATION

A. Identify the majority owner of the firm holding 51% or more ownership interest.

(1) Full Name: _____ (2) Title: _____ (3) Home Phone #: _____

(4) Home Address (Street and Number): _____ City: _____ State: _____ Zip: _____

(5) Gender: Male Female

(6) Ethnic group membership (Check all that apply):

- Black Hispanic
 Asian Pacific Native American
 Subcontinent Asian
 Other (specify) _____

(7) U.S. Citizenship:

- U.S. Citizen
 Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____

(9) Percentage owned: _____ %

Class of stock owned: _____

Date acquired _____

Table with 3 columns: Initial investment to acquire ownership interest in firm, Type, Dollar Value. Rows include Cash, Real Estate, Equipment, and Other.

Describe how you acquired your business:

- Started business myself
 It was a gift from: _____
 I bought it from: _____
 I inherited it from: _____
 Other _____

(Attach documentation substantiating your investment)

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

(2) Does this owner perform a management or supervisory function for any other business? Yes No

If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) Yes No

Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification ? \$ _____

(b) Has any trust been created for the benefit of this disadvantaged owner(s)? Yes No

(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? Yes No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage the company: (Please attach extra sheets, if needed): _____



Section 3: OWNER INFORMATION, Cont'd.

A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in the firm (Attach separate sheets for each additional owner)

(1) Full Name: _____ (2) Title: _____ (3) Home Phone #: () _____ - _____

(4) Home Address (Street and Number): _____ City: _____ State: _____ Zip: _____

(5) Gender: Male Female

(6) Ethnic group membership (Check all that apply)

- Black Hispanic
 Asian Pacific Native American
 Subcontinent Asian
 Other (specify) _____

(7) U.S. Citizenship:

- U.S. Citizen
 Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____

(9) Percentage owned: _____ %

Class of stock owned: _____
Date acquired _____

Table with 3 columns: (10) Initial investment to acquire ownership interest in firm, Type, Dollar Value. Rows include Cash, Real Estate, Equipment, and Other.

Describe how you acquired your business:

- Started business myself
 It was a gift from: _____
 I bought it from: _____
 I inherited it from: _____
 Other _____

(Attach documentation substantiating your investment)

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

(2) Does this owner perform a management or supervisory function for any other business? Yes No

If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) Yes No

Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? \$ _____

(b) Has any trust been created for the benefit of this disadvantaged owner(s)? Yes No

(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? Yes No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage: (Please attach extra sheets, if needed): _____

Section 4: CONTROL



A. Identify your firm's Officers and Board of Directors (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				

(3) Do any of the persons listed above perform a management or supervisory function for any other business?

Yes No If Yes, identify for each:

Person: _____ Title: _____
 Business: _____ Function: _____

Person: _____ Title: _____
 Business: _____ Function: _____

(4) Do any of the persons listed in section A above own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)

Yes No If Yes, identify for each:

Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

B. Duties of Owners, Officers, Directors, Managers, and Key Personnel

1. (Identify your firm's management personnel who control your firm in the following areas (Attach separate sheets as needed).)

A = Always F = Frequently	S = Seldom N = Never	Majority Owner (51% or more)				Minority Owner (49% or less)			
		Name: _____	Title: _____	Percent Owned: _____		Name: _____	Title: _____	Percent Owned: _____	
Sets policy for company direction/scope of operations		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Bidding and estimating		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Major purchasing decisions		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Marketing and sales		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Supervises field operations		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Attend bid opening and lettings		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Perform office management (billing, accounts receivable/payable, etc.)		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Hires and fires management staff		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Hire and fire field staff or crew		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Designates profits spending or investment		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Obligates business by contract/credit		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Purchase equipment		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Signs business checks		A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>

2. Complete for all Officers, Directors, Managers, and Key Personnel who control the following functions for the firm. (Attach separate sheets as needed).

A= Always S = Seldom F = Frequently N = Never	Officer/Director/Manager/Key Personnel				Officer/Director/Manager/ Key Personnel			
	Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____				Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____			
Sets policy for company direction/scope of operations	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Bidding and estimating	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Major purchasing decisions	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Marketing and sales	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Supervises field operations	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Attend bid opening and lettings	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Perform office management (billing, accounts receivable/payable, etc.)	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Hires and fires management staff	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Hire and fire field staff or crew	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Designates profits spending or investment	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Obligates business by contract/credit	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Purchase equipment	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Signs business checks	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>

Do any of the persons listed in B1 or B2 perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function: _____

Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) If Yes, describe the nature of the business relationship: _____

C. Inventory: Indicate your firm's inventory in the following categories (Please attach additional sheets if needed):

1. Equipment and Vehicles

Make and Model	Current Value	Owned or Leased by Firm or Owner?	Used as collateral?	Where is item stored?
1. _____				
2. _____				
3. _____				
4. _____				
5. _____				
6. _____				
7. _____				
8. _____				
9. _____				

2. Office Space

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease



3. Storage Space (Provide signed lease agreements for the properties listed)

Street Address

Owned or Leased by
Firm or Owner?

Current Value of Property or Lease

D. Does your firm rely on any other firm for management functions or employee payroll? Yes No

E. Financial/Banking Information (Provide bank authorization and signature cards)

Name of bank: _____ City and State: _____

The following individuals are able to sign checks on this account: _____

Name of bank: _____ City and State: _____

The following individuals are able to sign checks on this account: _____

Bonding Information: If you have bonding capacity, identify the firm's bonding aggregate and project limits:

Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm including from financial institutions. Identify whether you the owner and any other person or firm loaned money to the applicant DBE/ACDBE. Include the names of any persons or firms guaranteeing the loan, if other than the listed owner. (Provide copies of signed loan agreements and security agreements).

Name of Source	Address of Source	Name of Person Guaranteeing the Loan	Original Amount	Current Balance	Purpose of Loan
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years (Attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____

H. List current licenses/permits held by any owner and/or employee of your firm

(e.g. contractor, engineer, architect, etc.)(Attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	State
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____



I. List the three largest contracts completed by your firm in the past three years, if any:

	Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1.	_____	_____	_____	_____
2.	_____	_____	_____	_____
3.	_____	_____	_____	_____

J. List the three largest active jobs on which your firm is currently working:

	Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1.						
2.						
3.						

AIRPORT CONCESSION (ACDBE) APPLICANTS ONLY MUST COMPLETE THIS SECTION

Identify the following information concerning the ACDBE applicant firm:

<u>Concession Space</u>	<u>Address / Location at Airport</u>	<u>Value of Property or Lease</u>	<u>Fees/Lease Payments Paid to the Airport</u>

Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession

<u>Name of Concession</u>	<u>Location</u>	<u>Type of Concession</u>	<u>Start Date of Concession</u>



AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed),
swear or affirm under penalty of law that I am
_____ (title) of the applicant firm
_____ and that I
have read and understood all of the questions in this
application and that all of the foregoing information and
statements submitted in this application and its attachments
and supporting documents are true and correct to the best of
my knowledge, and that all responses to the questions are full
and complete, omitting no material information. The responses
include all material information necessary to fully and
accurately identify and explain the operations, capabilities and
pertinent history of the named firm as well as the ownership,
control, and affiliations thereof.

I recognize that the information submitted in this application is
for the purpose of inducing certification approval by a
government agency. I understand that a government agency
may, by means it deems appropriate, determine the accuracy
and truth of the statements in the application, and I authorize
such agency to contact any entity named in the application, and
the named firm's bonding companies, banking institutions,
credit agencies, contractors, clients, and other certifying
agencies for the purpose of verifying the information supplied
and determining the named firm's eligibility.

I agree to submit to government audit, examination and review
of books, records, documents and files, in whatever form they
exist, of the named firm and its affiliates, inspection of its
places(s) of business and equipment, and to permit interviews
of its principals, agents, and employees. I understand that
refusal to permit such inquiries shall be grounds for denial of
certification.

If awarded a contract, subcontract, concession lease or
sublease, I agree to promptly and directly provide the prime
contractor, if any, and the Department, recipient agency, or
federal funding agency on an ongoing basis, current, complete
and accurate information regarding (1) work performed on the
project; (2) payments; and (3) proposed changes, if any, to the
foregoing arrangements.

I agree to provide written notice to the recipient agency or
Unified Certification Program of any material change in the
information contained in the original application within 30
calendar days of such change (e.g., ownership changes,
address/telephone number, personal net worth exceeding \$1.32
million, etc.).

I acknowledge and agree that any misrepresentations in this
application or in records pertaining to a contract or subcontract
will be grounds for terminating any contract or subcontract
which may be awarded; denial or revocation of certification;
suspension and debarment; and for initiating action under
federal and/or state law concerning false statement, fraud or
other applicable offenses.

I certify that I am a socially and economically disadvantaged
individual who is an owner of the above-referenced firm seeking
certification as a Disadvantaged Business Enterprise or Airport
Concession Disadvantaged Business Enterprise. In support of my
application, I certify that I am a member of one or more of the
following groups, and that I have held myself out as a member of
the group(s): (Check all that apply):

- Female Black American Hispanic American
 Native American Asian-Pacific American
 Subcontinent Asian American Other (specify)

I certify that I am socially disadvantaged because I have been
subjected to racial or ethnic prejudice or cultural bias, or have
suffered the effects of discrimination, because of my identity
as a member of one or more of the groups identified above,
without regard to my individual qualities.

I further certify that my personal net worth does not exceed
\$1.32 million, and that I am economically disadvantaged
because my ability to compete in the free enterprise system has
been impaired due to diminished capital and credit
opportunities as compared to others in the same or similar line
of business who are not socially and economically
disadvantaged.

I declare under penalty of perjury that the information
provided in this application and supporting documents is true
and correct.

Signature _____
(DBE/ACDBE Applicant) _____
(Date)

NOTARY CERTIFICATE



UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following REQUIRED documents. A failure to supply any information requested by the UCP may result in your firm denied DBE/ACDBE certification.

Required Documents for All Applicants

- Résumés (that include places of employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
- Personal Net Worth Statement for each socially and economically disadvantaged owners comprising 51% or more of the ownership percentage of the applicant firm.
- Personal Federal tax returns for the past 3 years, if applicable, for each disadvantaged owner
- Federal tax returns (and requests for extensions) filed by the firm and its affiliates with related schedules, for the past 3 years.
- Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- Signed loan and security agreements, and bonding forms
- List of equipment and/or vehicles owned and leased including VIN numbers, copy of titles, proof of ownership, insurance cards for each vehicle.
- Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm
- Licenses, license renewal forms, permits, and haul authority forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past 2 years
- DBE/ACDBE and SBA 8(a), SDB, MBE/WBE certifications, denials, and/or decertifications, if applicable; and any U.S. DOT appeal decisions on these actions.
- Bank authorization and signatory cards
- Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
- List of all employees, job titles, and dates of employment.
- Proof of warehouse/storage facility ownership or lease arrangements

Partnership or Joint Venture

- Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- Official Articles of Incorporation (signed by the state official)
- Both sides of all corporate stock certificates and your firm's stock transfer ledger
- Shareholders' Agreement(s)
- Minutes of all stockholders and board of directors meetings

- Corporate by-laws and any amendments
- Corporate bank resolution and bank signature cards
- Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Optional Documents to Be Provided on Request

The UCP to which you are applying may require the submission of the following documents. If requested to provide these documents, you must supply them with your application or at the on-site visit.

- Proof of citizenship
- Insurance agreements for each truck owned or operated by your firm
- Audited financial statements (if available)
- Personal Federal Tax returns for the past 3 years, if applicable, for other disadvantaged owners of the firm.
- Trust agreements held by any owner claiming disadvantaged status
- Year-end balance sheets and income statements for the past 3 years (or life of firm, if less than three years)

Suppliers

- List of product lines carried and list of distribution equipment owned and/or leased



U.S. Department of
Transportation

**Personal Net Worth Statement
For DBE/ACDBE Program Eligibility**

As of _____

OMB APPROVAL NO:
EXPIRATION DATE:

This form is used by all participants in the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Programs. Each individual owner of a firm applying to participate as a DBE or ACDBE, whose ownership and control are relied upon for DBE certification must complete this form. Each person signing this form authorizes the Unified Certification Program (UCP) recipient to make inquiries as necessary to verify the accuracy of the statements made. The agency you apply to will use the information provided to determine whether an owner is economically disadvantaged as defined in the DBE program regulations 49 C.F.R. Parts 23 and 26. **Return form to appropriate UCP certifying member, not U.S. DOT.**

Name		Business Phone
Residence Address (As reported to the IRS) City, State and Zip Code		Residence Phone
Business Name of Applicant Firm		
Spouse's Full Name (Marital Status: Single, Married, Divorced, Union)		

ASSETS		LIABILITIES	
(Omit Cents)		(Omit Cents)	
Cash and Cash Equivalents	\$	Loan on Life Insurance (Complete Section 5)	\$
Retirement Accounts (IRAs, 401Ks, 403Bs, Pensions, etc.) (Report full value minus tax and interest penalties that would apply if assets were distributed today) (Complete Section 3)	\$	Mortgages on Real Estate Excluding Primary Residence Debt (Complete Section 4)	\$
Brokerage, Investment Accounts	\$	Notes, Obligations on Personal Property (Complete Section 6)	\$
Assets Held in Trust	\$	Notes & Accounts Payable to Banks and Others (Complete Section 2)	\$
Loans to Shareholders & Other Receivables (Complete section 6)	\$	Other Liabilities (Complete Section 8)	\$
Real Estate Excluding Primary Residence (Complete Section 4)	\$	Unpaid Taxes (Complete Section 8)	\$
Life Insurance (Cash Surrender Value Only) (Complete Section 5)	\$		
Other Personal Property and Assets (Complete Section 6)	\$		
Business Interests Other Than the Applicant Firm (Complete Section 7)	\$		
Total Assets	\$	Total Liabilities	\$
		NET WORTH	

Section 2. Notes Payable to Banks and Others

Name of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 3. Brokerage and custodial accounts, stocks, bonds, retirement accounts. (Full Value) (Use attachments if necessary).

Name of Security / Brokerage Account / Retirement Account	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned (Including Primary Residence, Investment Properties, Personal Property Leased or Rented for Business Purposes, Farm Properties, or any Other Income Producing property). (List each parcel separately. Add additional sheets if necessary).

	Primary Residence	Property B	Property C
Type of Property			
Address			
Date Acquired and Method of Acquisition (purchase, inherit, divorce, gift, etc.)			
Names on Deed			
Purchase Price			
Present Market Value			
Source of Market Valuation			
Name of all Mortgage Holders			
Mortgage Acc. # and balance (as of date of form)			
Equity line of credit balance			
Amount of Payment Per Month/Year (Specify)			

Section 5. Life Insurance Held (Give face amount and cash surrender value of policies, name of insurance company and beneficiaries).

Insurance Company	Face Value	Cash Surrender Amount	Beneficiaries	Loan on Policy Information

Section 6. Other Personal Property and Assets (Use attachments as necessary)

Type of Property or Asset	Total Present Value	Amount of Liability (Balance)	Is this asset insured?	Lien or Note amount and Terms of Payment
Automobiles and Vehicles (including recreation vehicles, motorcycles, boats, etc.) Include personally owned vehicles that are leased or rented to businesses or other individuals.				
Household Goods / Jewelry				
Other (List)				
Accounts and Notes Receivables				

Section 7. Value of Other Business Investments, Other Businesses Owned (excluding applicant firm)
Sole Proprietorships, General Partners, Joint Ventures, Limited Liability Companies, Closely-held and Public Traded Corporations

Section 8. Other Liabilities and Unpaid Taxes (Describe)

Section 9. Transfer of Assets: Have you within 2 years of this personal net worth statement, transferred assets to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust? Yes No If yes, describe.

I declare under penalty of perjury that the information provided in this personal net worth statement and supporting documents is complete, true and correct. I certify that no assets have been transferred to any beneficiary for less than fair market value in the last two years. I recognize that the information submitted in this application is for the purpose of inducing certification approval by a government agency. I understand that a government agency may, by means it deems appropriate, determine the accuracy and truth of the statements in the application and this personal net worth statement, and I authorize such agency to contact any entity named in the application or this personal financial statement, including the names banking institutions, credit agencies, contractors, clients, and other certifying agencies for the purpose of verifying the information supplied and determining the named firm's eligibility. I acknowledge and agree that any misrepresentations in this application or in records pertaining to a contract or subcontract will be grounds for terminating any contract or subcontract which may be awarded; denial or revocation of certification; suspension and debarment; and for initiating action under federal and/or state law concerning false statement, fraud or other applicable offenses.

NOTARY CERTIFICATE:
(Insert applicable state acknowledgment, affirmation, or oath)

Signature (DBE/ACDBE Owner) _____ Date _____

In collecting the information requested by this form, the Department of Transportation complies with Federal Freedom of Information and Privacy Act (5 U.S.C. 552 and 552a) provisions. The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Disadvantaged Business Enterprise (DBE) Program or Airport Concessionaire DBE Programs as defined in 49 C.F.R. Parts 23 and 26. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).



General Instructions for Completing the Personal Net Worth Statement for DBE/ACDBE Program Eligibility

Please do not make adjustments to your figures pursuant to U.S. DOT regulations 49 C.F.R. Parts 23 and 26. The agency that you apply to will use the information provided on your completed Personal Net Worth (PNW) Statement to determine whether you meet the economic disadvantage requirements of 49 C.F.R. Parts 23 and 26. If there are discrepancies or questions regarding your form, it may be returned to you to correct and complete again.

An individual's personal net worth according to 49 C.F.R. Parts 23 and 26 includes only his or her own share of assets held separately, jointly, or as community property with the individual's spouse and excludes the following:

- Individual's ownership interest in the applicant firm;
- Individual's equity in his or her primary residence;
- Tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.

Indicate on the form, if any items are jointly owned. If the personal net worth of the majority owner(s) of the firm exceeds \$1.32 million, as defined by 49 C.F.R. Parts 23 and 26, the firm is not eligible for DBE or ACDBE certification. If the personal net worth of the majority owner(s) exceeds the \$1.32 million cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise that your firm no longer qualifies as a DBE or ACDBE. You must fill out all line items on the Personal Net Worth Statement.

If necessary, use additional sheets of paper to report all information and details. If you have any questions about completing this form, please contact one of the UCP certifying agencies.

Assets

All assets must be reported at their current fair market values as of the date of your statement. *Assessor's assessed value for real estate, for example, is not acceptable.* Assets held in a trust should be included.

Cash and Cash Equivalents: On page 1, enter the total amount of cash or cash equivalents in bank accounts, including checking, savings, money market, certificates of deposit held domestic or foreign. Provide copies of the bank statement.

Retirement Accounts, IRA, 401Ks, 403Bs, Pensions: On page 1, enter the full value minus tax and interest penalties that would apply if assets were distributed as of the date of the form. Describe the number of shares, name of securities, cost market value, date of quotation, and total value in section 3 on page 2.

Brokerage and Custodial Accounts, Stocks, Bonds, Retirement Accounts: Report total value on page 1, and on page 2, section 3, enter the name of the security, brokerage account, retirement account, etc.; the cost; market value of the asset; the date of quotation; and total value as of the date of the PNW statement.

Assets Held in Trust: Enter the total value of the assets held in trust on page 1, and provide the names of beneficiaries and trustees, and other information in Section 6 on page 3.

Loans to Shareholders and Other Receivables not listed: Enter amounts loaned to you from your firm, from any other business entity in which you hold an ownership interest, and other receivables not listed above. Complete Section 6 on page 3.

Real Estate: The total value of real estate excluding your primary residence should be listed on page 1. In section 4 on page 2, please list your primary residence in column 1, including the address, method of acquisition, date of acquired, names of deed, purchase price, present fair market value, source of market valuation, names of all mortgage holders, mortgage account number and balance, equity line of credit balance, and amount of payment. List this information for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial properties, personal property leased or rented for business purposes, farm properties and any other income producing properties, etc. Attach additional sheets if needed.

Life Insurance: On page 1, enter the cash surrender value of this asset. In section 5 on page 2, enter the name of the insurance company, the face value of the policy, cash surrender value, beneficiary names, and loans on the policy.

Other Personal Property and Assets: Enter the total value of personal property and assets you own on page 1. Personal property includes motor vehicles, boats, trailers, jewelry, furniture, household goods, collectibles, clothing, and personally owned vehicles that are leased or rented to businesses or other individuals. In section 6 on page 3, list these assets and enter the present value, the balance of any liabilities, whether the asset is insured, and lien or note information and terms of payments. For accounts and notes receivable, enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm, if those exist. If the asset is insured, you may be asked to provide a copy of the policy. You may also be asked to provide a copy of any liens or notes on the property.

Other Business Interests Other than Applicant Firm: On page 1, enter the total value of your other business investments (excluding the applicant firm). In section 7 on page 3, enter information concerning the businesses you

hold an ownership interest in, such as sole proprietorships, partnerships, joint ventures, corporations, or limited liability corporations (other than the applicant firm). Do not reduce the value of these entries by any loans from the outside firm to the DBE/ACDBE applicant business.

Liabilities

Mortgages on Real Estate: Enter the total balance on all mortgages payable on real estate on page 1.

Loans on Life Insurance: Enter the total value of all loans due on life insurance policies on page 1, and complete section 5 on page 2.

Notes & Accounts Payable to Bank and Others: On page 1, section 2, enter details concerning any liability, including name of noteholders, original and current balances, payment terms, and security/collateral information. The entries should include automobile installment accounts. This should not, however, include any mortgage balances as this information is captured in section 4. Do not include loans for your business or mortgages for your properties in this section. You may be asked to submit copy of note/security agreement, and the most recent account statement.

Other Liabilities: On page 1, enter the total value due on all other liabilities not listed in the previous entries. In section 8, page 3, report the name of the individual obligated, names of co-signers, description of the liability, the name of the entity owed, the date of the obligation, payment amounts and terms. Note: Do not include contingent liabilities in this section. Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you

have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do not count toward your net worth until they become actual liabilities.

Unpaid Taxes: Enter the total amount of all taxes that are currently due, but are unpaid on page 1, and complete section 8 on page 3. Contingent tax liabilities or anticipated taxes for current year should not be included. Describe in detail the name of the individual obligated, names of co-signers, the type of unpaid tax, to whom the tax is payable, due date, amount, and to what property, if any, the tax lien attaches. If none, state "NONE." You must include documentation, such as tax liens, to support the amounts.

Transfers of Assets:

Transfers of Assets: If you checked the box indicating yes on page 3 in this category, provide details on all asset transfers (within 2 years of the date of this personal net worth statement) to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust. Include a description of the asset; names of individuals on the deed, title, note or other instrument indicating ownership rights; the names of individuals receiving the assets and their relation to the transferor; the date of the transfer; and the value or consideration received. Submit documentation requested on the form related to the transfer.

Affidavit

Be sure to sign and date the statement. The Personal Net Worth Statement must be notarized



Department of Transportation

State of Georgia

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Atlanta, Georgia 30334-1002

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BILLY F. SHARP
TREASURER
(404) 656-5224

January 7, 2002

U.S. Department of Transportation
Office of General Counsel
Attn: Mr. Robert Ashby
Uniform Certification Program
Room 10424
400 Seventh Street, SW
Washington, DC 20590

Reference: Unified Certification Program Funding

Dear Mr. Ashby:

The Uniform Certification Program (UCP) 49 Code of Federal Regulations Part 26.81 requires all Department of Transportation's recipients in a state to submit an established UCP for the State to the Secretary of Transportation by March 4, 2002. As a result of meeting with the stakeholders in Georgia, The Georgia Department of Transportation was unanimously selected as the lead agency for the Unified Certification Program. GDOT requested assistance to carry out this function from the Metropolitan Atlanta Rapid Transit Authority (MARTA).

The Disadvantaged Business Program has been recognized as a vital part of the civil rights programs with high visibility and impact assessment. The UCP is directly connected to these programs. Since the UCP is a mandate set upon the States, Georgia is submitting the following justification for consideration for funding.

Justification for Funds:

The Georgia Department of Transportation, Office of Equal Opportunity is requesting funding in the amount of One Hundred Thousand Dollars (\$100,000) for start-up cost, and Fifty-Thousand (\$50,000) each fiscal year to defray the additional operational expenses associated with maintaining this federally programmed mandate. The Office of Equal Opportunity will establish one stop shopping procedures to allow statewide coverage for UCP requirements.

The funds will be used to purchase:

- Filing cabinets
- Cover printing cost
- Site visits (including auto, gas, maintenance)
- Telephone coverage (local and long distance)
- Postage for mailings
- Publication and distribution of the monthly Statewide DBE Directory
- And other associated cost.

The Office of Equal Opportunity suggest that funding for this program is an allowable expense and the additional funding should be appropriated from Federal Highway Administration, Federal Aviation Administration, and Federal Transit Administration.

As Deputy Commissioner for the Department of Transportation, I am directly responsible for the Civil Rights/Equal Opportunity and Disadvantaged Business Enterprise Programming. Your assistance in this matter would greatly assist the State of Georgia in carrying out the directive outline by 49 CFR Part 26. Thank you in advance for your consideration. If you require additional information or documentation, please call Michael Cooper, Division Director Equal Opportunity at (404) 657-5323.

Sincerely,

Harold E. Linnenkohl
Deputy Commissioner

Cost, Funding and Resources Associated with the Unified Certification Program State of Georgia

The cost associated with the Unified Certification Program in the State of Georgia that would be passed on to GDOT as the lead agency is anticipated as follows:

- Files of new DBE Applicants (cabinets, folders and paper copies)
- Printing of Certification Application Forms, Letters of Certification, Denial Letters, Follow-up, Re-Certification and miscellaneous written correspondence.
- Postage, Certified Mail, Federal Express
- Site Visits (Auto, gas, maintenance)
- Telephone Cost & Usage (support staff coverage, local and long distance)
- Publication of Paper DBE Directory and Monthly Logging Update of Electronic Directory

Resources that will be dedicated to the Unified Certification Program from the Georgia Department of Transportation and Metropolitan Atlanta Rapid Transit Authority (MARTA) will be organizational resource support as follows:

Georgia Department of Transportation:

Division Director Equal Opportunity

Office Administrator

Two Support Staff

Two DBE Coordinators

Seven District Equal Opportunity Coordinators (see Statewide Districts chart attached)

MARTA:

Assistant to General Manager for Diversity and Equal Opportunity

Assistant Director for Equal Opportunity

Three Analysts

Contract Employee(s)

Support Staff

Funding of the Unified Certification Program in Georgia

After careful analysis of the cost and current resources associated with the UCP it was anticipated that the initial start-up cost of the UCP Program would be estimated at One Hundred Thousand Dollars (\$100,000).

Recommendation for funding of the GUCP was to proceed in two manners.

- 1) Submit official request to USDOT for assistance in funding the UCP (see attached 1/7/2002 letter to Robert Ashby)
- 2) Charge Federal Recipients:

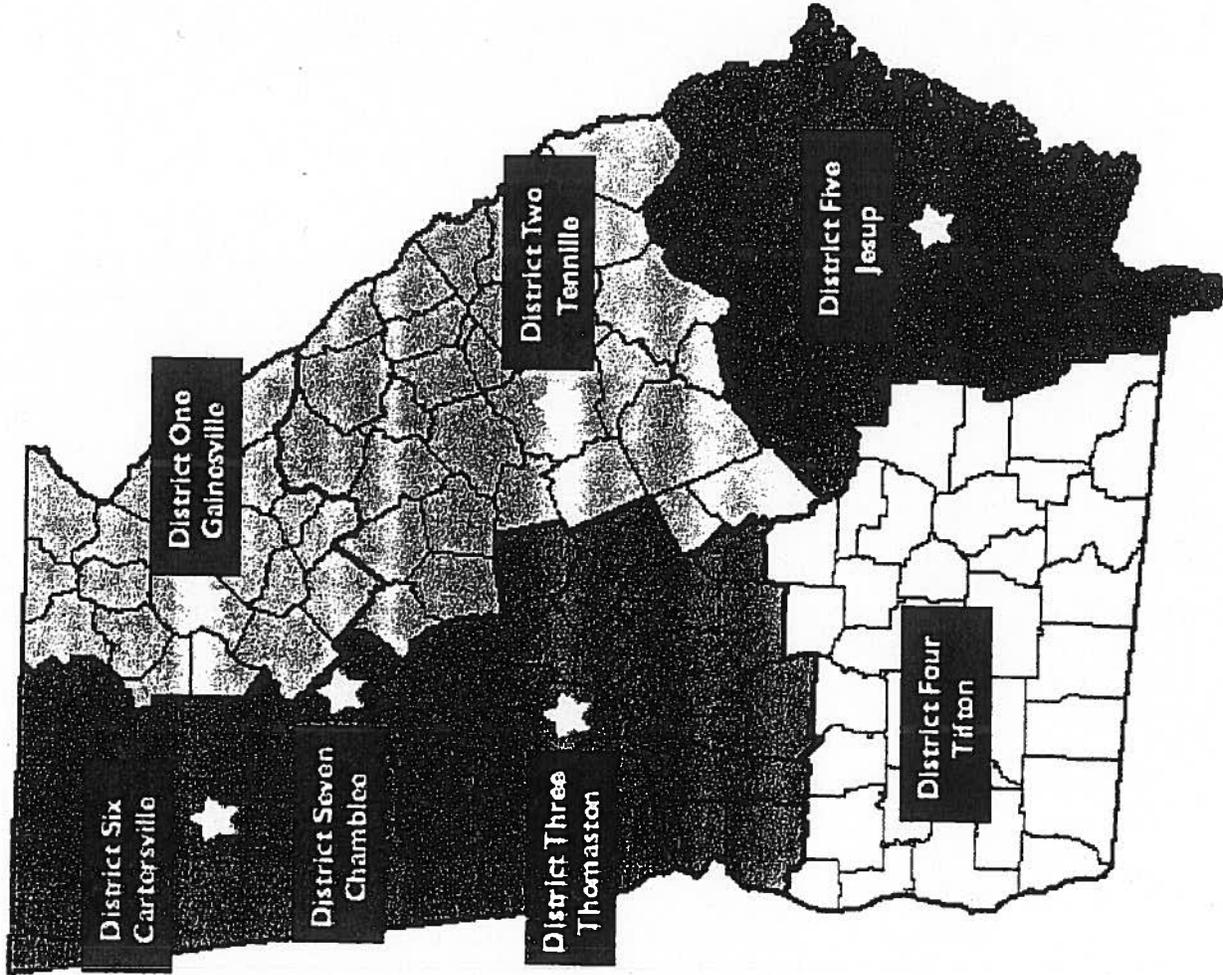
Further analysis of the usage of federal recipient programming dollars for transportation and DBE utilization was highest by GDOT, MARTA and Metro Atlanta Counties (75-80%). Therefore, the cost for the UCP will be carried by:

GEORGIA DEPARTMENT OF TRANSPORTATION (LEAD AGENCY)
Metropolitan Atlanta Rapid Transit Authority (MARTA) (PERSONNEL FOR SITE VISITS
AND CERTIFICATION RECOMMENDATIONS IN LIEU OF FINANCIAL CONTRIBUTION)
FULTON COUNTY (\$10,000)
CITY of ATLANTA (\$10,000)
DEKALB COUNTY (\$10,000)
COBB COUNTY (\$10,000)
CLAYON COUNTY (\$10,000)
QWINNETT COUNTY (\$10,000)
GEORGIA REGIONAL TRANSPORTATION AUTHORITY (GRTA) (\$10,000)
GEORGIA DEPARTMENT OF ADMINISTRATIVE SERVICE/ GOVERNORS
SMALL BUSINESS CENTER (\$10,000)

Resources

Georgia DOT has a Statewide Network Equal Employment Officer in each District

- General Office Atlanta
- District 1 Gainesville
- District 2 Tennille
- District 3 Thomaston
- District 4 Tifton
- District 5 Jesup
- District 6 Cartersville
- District 7 Chamblee



**MEMORANDUM OF UNDERSTANDING
BETWEEN THE
THE GEORGIA DEPARTMENT OF TRANSPORTATION,
And THE CITY OF ATLANTA**

This Memorandum of Understanding documents the participation of U.S. DOT Recipients and funding arrangements for the creation and implementation of the Unified Certification Program (UCP) in the State of Georgia.

PREAMBLE

WHEREAS, the Georgia Department of Transportation (GDOT), an agency of the State of Georgia, has undertaken a Unified Certification Program to certify all Disadvantaged Business Enterprises in the State of Georgia with the cooperation of The Metropolitan Atlanta Rapid Transit Authority (MARTA)

WHEREAS, the initial assessment involves compiling information and developing tools regarding the development of a UCP in the State of Georgia; and

WHEREAS, this MOU will establish the certification procedures for Disadvantaged Business Enterprises participating in federally funded projects; and

WHEREAS, the certification program will require expertise to carry out its implementation on a statewide level; and

WHEREAS, the Georgia Department of Transportation will be the Lead Agency for the Unified Certification Program and accepts the responsibility for the statewide certification program, and;

WHEREAS, the State of Georgia Unified Certification Program is consistent with the laws, rules and regulation of Title VI of the 1964 Civil Rights Act and 49 Code of Register, Part 26, and,

WHEREAS, the U. S. DOT Recipients have a mission to:

1. Coordinate and participate in the certification review processes that affect socially and economically disadvantaged businesses.
2. Promote and maintain a UCP directory of socially and economically disadvantaged businesses.

Now, Therefore, in consideration of the mutual promises and covenant herein contained, it is hereby agreed by and between the parties:

(1) PURPOSE

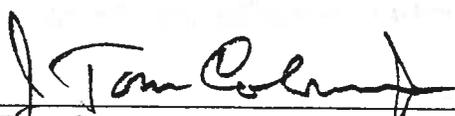
- (a) This Memorandum of Understanding outlines the scope of work including the obligations, responsibilities, and cost sharing of each participating agency.
- (b) GDOT, FHWA, MARTA, FAA, FTA and other recipients will have access to all work completed as part of the Unified Certification Program.

(2) FUNDING FOR THE UNIFIED CERTIFICATION PROGRAM:

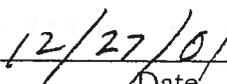
- (a) The Mayor, City of Atlanta shall provide Ten Thousand Dollars (\$10,000) in funding toward the UCP budget for implementation and Two Thousand Dollars (\$2,000) sustainment of the Unified Certification Program each fiscal year thereafter.
- (b) All of the signatory parties must consult and agree on funding of any costs required to complete the work described in the certification procedures and process prior to the work beginning.
- (c) All of the signatory parties agree to consult on the use of funds for work described in the certification procedure and process provided that all funds will be used for documentation and dissemination of the information on Disadvantaged Business Enterprises.

This agreement is entered into, by and among the recipients of Georgia Department of Transportation and **The City of Atlanta**. This agreement will take effect at the time of approval by all entities, as well as and the expenditure of funds referenced in this agreement.

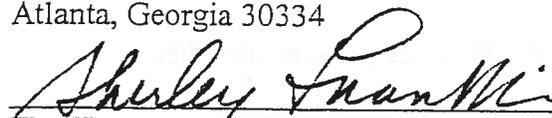
The signatory parties mutually agree to consult regarding any amendments or issues to be addressed. This agreement may be modified by written mutual consent of the signatory parties.



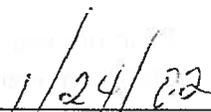
J. Tom Coleman, Jr., Commissioner
Georgia Department of Transportation
2 Capitol Square Suite 102
Atlanta, Georgia 30334



Date



The Honorable Shirley Franklin
Mayor, City of Atlanta
55 Trinity Ave. SW Suite 2400
Atlanta, GA 30303



Date

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE GEORGIA DEPARTMENT OF TRANSPORTATION AND
THE METROPOLITAN ATLANTA RAPID TRANSIT AUTHORITY**

This Memorandum of Understanding documents the participation of U.S. DOT Recipients, the Georgia Department of Transportation (GDOT), and the Metropolitan Atlanta Rapid Transit Authority (MARTA) and funding arrangements for the creation and implementation of the United Certification Program (UCP) in the State of Georgia.

PREAMBLE

WHEREAS, the Georgia Department of Transportation (GDOT), an agency of the State of Georgia, has undertaken a Unified Certification Program to certify all Disadvantaged Business Enterprises in the State of Georgia with the cooperation of The Metropolitan Atlanta Rapid Transit Authority (MARTA); and,

WHEREAS, the initial assessment involves compiling information and developing tools regarding the development of a UCP in the State of Georgia; and,

WHEREAS, this MOU binds the parties to establish the certification procedures in compliance with 49 Code of Federal Regulations (CFR), Part 26 for Disadvantaged Business Enterprises participating in federally funded projects; and,

WHEREAS, the certification program will require expertise to carry out its implementation on a statewide level; and,

WHEREAS, the Georgia Department of Transportation will be the Lead Agency for the Unified Certification Program and accepts the responsibility for the statewide certification program; and,

WHEREAS, the State of Georgia Unified Certification Program is consistent with the laws, rules and regulations of Title VI of the 1964 Civil Rights Act and 49 CFR, Part 26; and,

WHEREAS, the U.S. DOT Recipients have a mission to:

1. Coordinate and participate in the certification review process that affects socially and economically disadvantaged businesses; and
2. Promote and maintain a UCP directory of socially and economically disadvantaged businesses.

NOW, THEREFORE, in consideration of the mutual promises and covenant herein contained, it is hereby agreed by and between the parties:

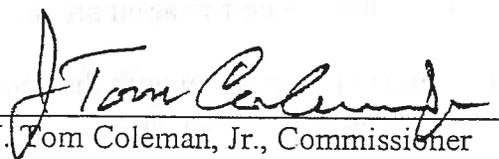
(1) PURPOSE

- (a) This Memorandum of Understanding outlines the scope of work including the obligations, responsibilities, and cost sharing of GDOT and MARTA.
- (b) GDOT, FHWA, MARTA, FAA, FTA and other recipients will have access to all work completed as part of the Unified Certification Program.

(2) SUPPORTIVE SERVICES FOR THE UNIFIED CERTIFICATION PROGRAM:

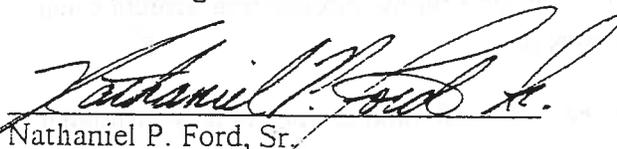
- (a) GDOT and the Metropolitan Atlanta Rapid Transit Authority shall provide administrative and personnel services including on sites, certifications and record keeping for the Unified Certification Program.
- (b) Both parties must consult and agree on services and any costs required to complete the work described in the certification procedures and process prior to the work beginning.
- (c) Both parties agree to consult on the use of services for work described in the certification procedure and process provided that all services will be used for documentation and dissemination of the information on Disadvantaged Business Enterprises.

This Agreement is entered into, by and among the recipients of Georgia Department of Transportation and the Metropolitan Atlanta Rapid Transit Authority. This agreement will take effect at the time of approval by all entities, as well as and the expenditures of funds referenced in this agreement.



J. Tom Coleman, Jr., Commissioner
Georgia Department of Transportation
2 Capital Square, Suite 102
Atlanta, Georgia 30334

2/22/2002
Date



Nathaniel P. Ford, Sr.
General Manager/CEO
Metropolitan Atlanta Rapid Transit Authority
2424 Piedmont Road, N.E.
Atlanta, Georgia 30324-3330

FEB. 22, 2002
Date

Revised: December 7, 2009
Revised: October 21, 2013
Revised: November 3, 2014

DEPARTMENT OF TRANSPORTATION
STATE OF GEORGIA
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
CRITERIA FOR ACCEPTABILITY

The purpose of this special provision is to establish criteria for acceptability of DBE firms for work performed on this contract. The intent is to ensure all participation counted toward fulfillment of the DBE goals is (1) real and substantial, (2) actually performed by viable, independent DBE owned firms, and (3) in accordance with the spirit of the applicable laws and regulations.

The policy of the Georgia Department of Transportation is to ensure compliance with Title VI of the Civil Rights Act of 1964, 49 Code of Federal Regulations, Part 26 and related statutes and regulations in all program activities.

To this end the Georgia Department of Transportation shall not discriminate on the basis of race, color, sex or national origin in the award, administration and performance of any Georgia Department of Transportation assisted contract or in the administration of its Disadvantaged Business Enterprise Program. The Georgia Department of Transportation shall take all necessary and reasonable steps to ensure nondiscrimination.

DBE payments and commitments for Federal-aid projects shall be separate and distinct and cannot be transferred or combined in any matter.

The DBE Goal specified in the contract will be a percentage representing the DBE Race Conscious Participation. The Contractor will strive to achieve an additional percentage in his/her contracts for all projects during the course of the current State Fiscal Year, in order to meet the overall Georgia Department of Transportation DBE goal.

DBE DIRECTORY: The Department has available a directory or source list to facilitate identifying DBEs with capabilities relevant to general contracting requirements and to particular

solicitations. The Department will make the directory available to bidders and proposers in their efforts to meet the DBE requirements. The directory or listing includes firms which the Department has certified to be eligible DBEs in accordance with 49 CFR Part 26.

GOAL FOR PARTICIPATION: If a percentage goal for DBE participation in this contract is set forth elsewhere in this proposal, the Contractor shall complete the DBE GOALS Form included in the proposal. The Contractor is encouraged to make every effort to achieve the goal set by the Department. However, if the Contractor cannot find sufficient DBE participants to meet the goal established by the Department, the Department will consider for award a proposal with less participation than the established goal if:

(A) The bidder can demonstrate no greater participation could be obtained. This should be well documented by demonstrating the Contractor's actions through good faith efforts. The following is a list of types of actions which the Department will consider as part of the Contractor's good faith efforts to obtain DBE participation. This is not intended to be a mandatory checklist nor intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

- (1) Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The Contractor must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The Contractor must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- (2) Selecting portions of the work to be performed by DBEs in order to increase the likelihood the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the Contractor might otherwise prefer to perform these work items with its own forces.
- (3) Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist DBE participants in responding to a solicitation.
- (4) (a) Negotiating in good faith with interested DBEs.

Contractor(s) are responsible to make a portion of the work available

to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

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

- (5) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The Contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. nonunion employee status) are not legitimate causes for the rejection or non-solicitation of bids in the Contractor's efforts to meet the project goal.

- (6) Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the contractor.

- (7) Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

- (8) Effectively using the services of available minority/women community organizations; minority/women Contractors' groups; local, state, and

Federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBE's.

- (B) The participation proposed by the low bidder is not substantially less than the participation proposed by the other bidders on the same contract.

If no percentage goal is set forth in the proposal, the contractor may enter a proposed DBE participation. This voluntary DBE participation will count as race neutral DBE participation. Prime Contractor shall report race-neutral participation in accordance with the DBE Monthly Report requirements shown in this document.

To be eligible for award of this contract, all bidders will be required to submit the following information to the Department by the close of business on the 3rd working day following opening of the bid as a matter of bidder responsibility.

- i. The names and addresses of DBE firms committed to participate in the Contract;
- ii. A description of the work each DBE will perform; The Contractor shall provide information with their bid showing that each DBE listed by the Contractor is certified in the NAICS code(s) for the kind of work the DBE will be performing.
- iii. The dollar amount of participation for each DBE firm participating; Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
- iv. Written confirmation from the DBE committed to participating in the contract, as provided in the prime contractor's commitment.
- v. If the contract goal is not met, evidence of good faith efforts must be provided.

Failure by a bidder to furnish the above information may subject the bid to disqualification. Also failure by the bidder to submit satisfactory evidence of good faith efforts may subject the bid to disqualification.

Award of a contract by the Department to a Prime Contractor who has listed DBE participants with the bid may not constitute final approval by the Department of the listed DBE. The

Department reserves the right to approve or disapprove a Disadvantaged firm after a review of the Disadvantaged firm's proposal participation. Payment to the Contractor under the contract may be withheld until final approval of the listed DBEs is granted by the Department.

If the Contractor desires to substitute a DBE in lieu of those listed in the proposal, a letter of concurrence shall be required from the listed DBE prior to approval of the substitution, unless this requirement is waived by the Department.

Agreements between bidder and a DBE in which promises not to provide Subcontracting quotations to other bidders are prohibited.

DEFINITION: For the purposes of this provision, the following definitions will apply:

Disadvantaged Business Enterprise or DBE means a for-profit small business concern –

- (1) Ensuring 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 the business.

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.

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.

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

- (1) Any individual who the Department finds to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are reputedly 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 American Indians, Eskimos, Aleuts, 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), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, 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) GDOT will presume that such persons are socially and economically disadvantaged only to the extent permitted by applicable federal law.

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

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

DISCRIMINATION PROHIBITED: No person shall be excluded from participation in, denied the benefits of, or otherwise discriminated against in connection with the award and performance of this contract on the grounds of race, color, sex or national origin.

The following assurance becomes a part of this contract and must be included in and made a part of each subcontract the prime contractor enters into with their subcontractors (49 CFR 26.13):

“The contractor, and/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 (breach) of this contract which may result in the termination of this contract or such other remedy as the Department deems appropriate”.

Failure to Achieve Requirements: Periodic reviews shall be made by the Department to determine the extent of compliance with the requirements set forth in this provision. If the Contractor is found to be in noncompliance, further payments for any work performed may be withheld until corrective action is taken. If corrective action is not taken, it may result in termination of this contract. During the life of the contract, the contractor will be expected to demonstrate good faith efforts at goal attainment as provided by 49 CFR 26.

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 the Department’s written consent to substitute and, unless the Department’s consent is provided the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

Participation will be counted toward fulfillment of the DBE goal as follows:

- (A) When a DBE participates in a contract, the Contractor counts only the value of the work actually performed by the DBE toward DBE goals.
 - (1) Count the entire amount of the portion of a construction contract (or other contract not covered by paragraph (A) (2) of this section) 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 the Department determines the fee is 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 the DBE performs with 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 responsible for execution of the work of the contract and carrying out 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.
 - (2) A DBE does not perform a commercially useful function if their role is limited to being an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation.
 - (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of their contract with their 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, the Department will presume the DBE 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.
 - (5) The Department's decisions on commercially useful function matters are subject to review by the US DOT, but are not administratively appealable to the US DOT.

- (D) The following factors are to be used 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 they are 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 provided on the contract.
 - (5) The DBE may also lease trucks from a non-DBE and is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
 - (6) For purposes of this paragraph (D), a lease must indicate 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, 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 obtained 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 owning, operating, or maintaining 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 engaging, 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 provision 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. Do not count the participation of a DBE subcontractor toward the prime contractor's DBE

achievements until the amount being counted toward the goal has been paid to the DBE.

- (5) No participation will be counted not in compliance with Special Provision entitled "Criteria for Acceptability" which is a part of this contract or with any provisions included in 49 CFR Part 26.
- (6) If the contract amount overruns, the contractor will not be required to increase the dollar amount of DBE participation. If the contract amount under runs, the contractor will not be allowed to under run the dollar amount of DBE participation except when the DBE subcontracted items themselves under run.

REPORTS

A. The contractor shall submit a "DBE Participation Report" on this contract monthly which shall include the following:

1. The name of each DBE participating in the contract.
2. A description of the work to be performed, materials, supplies, and services provided by each DBE.
3. Whether each DBE is a supplier, subcontractor, owner/operator, or other.
4. The dollar value of each DBE subcontract or supply agreement.
5. The actual payment to date of each DBE participating in the contract.
6. The report shall be updated by the Prime Contractor whenever the approved DBE has performed a portion of the work that has been designated for the contract. Copies of this report should be transmitted promptly to the Engineer. Failure to submit the report within 30 calendar days following the end of the month may cause payment to the contractor to be withheld.
7. The Prime Contractor shall notify the Project Engineer at least 24 hours prior to the time the DBE commences working on the project. The DBE must furnish supervision of the DBE portion of the work, and the person responsible for this supervision must report to the Project Engineer when they

begin work on the project. They must also inform the Project Engineer when their forces will be doing work on the project.

B. In order to comply with 49 CFR 26.11, the Prime Contractor shall submit documentation regarding all payments made from the Prime to all DBE subcontractors on federal aid projects in the form of copies of cancelled checks or notarized electronic documentation which validates said payments made on the DBE Monthly Participation Reports. This information shall be required monthly and submitted with the DBE Monthly Participation Report.

C. Failure to respond within the time allowed in the request will be grounds for withholding all payments on all Contracts.

SUBSTITUTION OF DBEs: The Contractor shall make reasonable efforts to replace a DBE Subcontractor unable to perform work for any reason with another DBE. The Department shall approve all substitutions of Subcontractors in order to ensure the substitute firms are eligible DBEs.

When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, the prime contractor must 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. 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.

CERTIFICATION OF DBEs: To ensure the DBE Program benefits only firms owned and controlled by Disadvantaged Individuals, the Department shall certify the eligibility of DBEs and joint ventures involving DBEs named by bidders.

Questions concerning DBE Certification/Criteria should be directed to the EEO Office at (404) 631-1972.



Interstate Certification Process

The Georgia Unified Certification Program has published the **DBE Interstate Application Checklist** and the **DBE Interstate Application Affidavit**. The Interstate Certification process applies to firms already certified in their home state, and seeking certification in Georgia. Guidance provided by the USDOT in the summer of 2014, provided that a firm currently certified in its home state is not required to submit a **new** uniform certification application as if it were seeking certification for the first time. *A DBE firm may simply present a copy of its DBE application among other required documents as submitted to its home State's UCP.* The *DBE Interstate Application Checklist* provides the list of items required. The *DBE Interstate Application Affidavit* **must** be completed and submitted with the application.

Georgia Unified Certification Program
DBE Interstate Application Checklist

49 CFR 26.85(c)

The Georgia UCP does not have reciprocity with other State UCPs. That being Georgia **chooses not to accept** other State's DBE certification of a firm. Therefore, as the applicant your firm must provide the information in paragraphs (1) through (4) of this section to the Georgia Department of Transportation.

- 1). You **must** provide a **complete copy** of the application form (*that was provided to your home State*), all supporting documents, and any other information you have submitted to your home state. This includes affidavits of no change and any notices of changes that you have submitted to your home State, as well as any correspondence you have had with your home State's UCP or any other recipient concerning your application or status as a DBE firm.
- 2) You **must** also provide any notices or correspondence from states other than your home State relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in another State, or subject to a decertification action there, you must inform the Georgia Department of Transportation of this fact and provide all documentation concerning this action to the Georgia Department of Transportation.
- 3) If you have filed a certification appeal with DOT you **must** inform the Georgia Department of Transportation of the fact and provide your letter of appeal and DOT's response to the Georgia Department of Transportation.
- 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 your home State supporting your certification in your home State is more than three years old, as of the date of your application to the Georgia Department of Transportation, we may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

**Georgia Unified Certification Program
DISADVANTAGED BUSINESS ENTERPRISE
Interstate Application Affidavit**

Business Name:	
Federal Identification No: (EIN)	
Business Address:	
Telephone No:	
Business Contact Email Address:	

I/We the undersigned owner(s) of the above referenced firm submit the enclosed application for Disadvantaged Business Enterprise (DBE) certification in the State of Georgia and do hereby declare and affirm the facts presented herein are true and correct to the best of my/our knowledge:

1. All the information required by 49 CFR 26.85(c) is attached, and complete.
2. The facts set forth in the on-site conducted _____ from _____ (home state) remain true and correct.
3. An identical copy of the application, all supporting documents, and any other information submitted to my/our home state and any other state related to this firm's certification, including affidavits of no change, any notices of changes, as well as all correspondence related to the firm's application or status as a DBE has been provided with this affidavit.

ANY MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION OR AFFIDAVIT IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

Owner 1 Signature	Printed Name & Title	Date
Owner 2 Signature	Printed Name & Title	Date
Owner 3 Signature	Printed Name & Title	Date
Owner 4 Signature	Printed Name & Title	Date
Owner 5 Signature	Printed Name & Title	Date
Owner 6 Signature	Printed Name & Title	Date

Notary:

STATE OF: _____
 COUNTY OF: _____

Sworn to (or affirmed) and subscribed before me this _____ day _____ 20_____

(NOTARY SEAL)

 (Signature of Notary)

 (Name of Notary, Typed, Printed, or Seal)

Personally known or produced identification, _____ (type of identification).

**DEPARTMENT OF TRANSPORTATION
STATE OF GEORGIA**

First Use 2013 Specifications: November 01, 2013

SPECIAL PROVISION

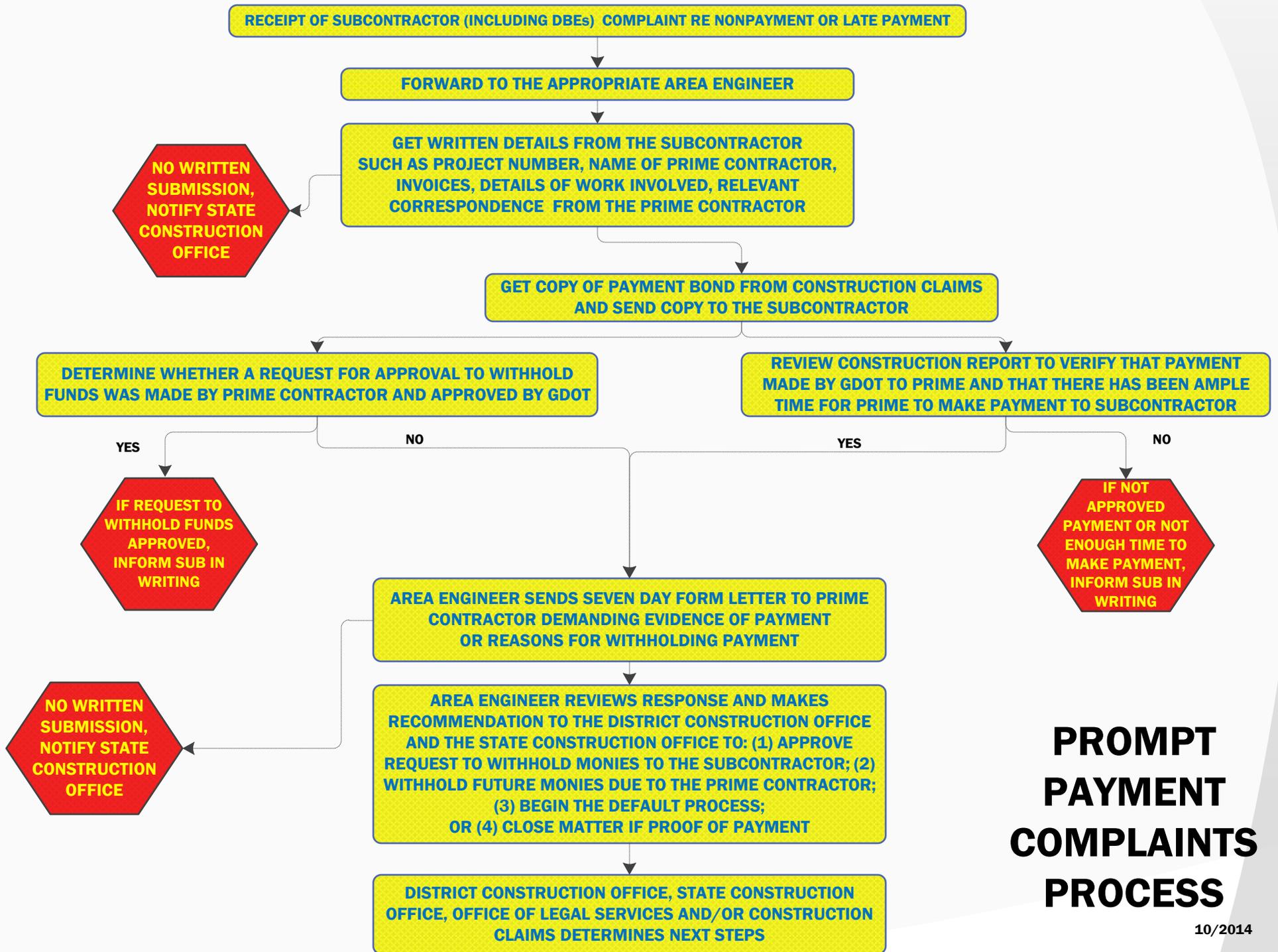
PROMPT PAYMENT:

Prime Contractors, who sublet a portion of their work, shall pay their subcontractors for satisfactory performance of their contracts no later than 10 calendar days from receipt of each payment made to them.

Any delay or postponement of payment among the parties may take place only for good cause with prior written approval from the Department.

If the contractor is found to be in noncompliance with these provisions, it shall constitute a breach of contract and further payments for any work performed may be withheld until corrective action is taken. If corrective action is not taken, it may result in termination of the contract.

All subcontract agreements shall contain this requirement.



PROMPT PAYMENT COMPLAINTS PROCESS

PROMPT PAYMENT COMPLAINTS PROCESS:
PROCEDURES TO FOLLOW WHERE ALLEGATIONS ARE MADE OF
NONPAYMENT

A. Request for Copy Payment Bond Only

Any request for a copy of a Payment Bond should be sent to Construction Claims. Construction Claims will be responsible for providing a copy of the Payment Bond to the requesting party. The requesting party will be instructed to follow the surety's claims procedures.

Where there have been numerous requests for a copy of the Payment Bond from various Subcontractors, Vendors and/or Suppliers on a project, Construction Claims will alert the State Construction Office and the Office of Legal Services.

B. Lien Letter

If a letter or other documents are received notifying the Department that a lien has been placed upon Department property or a project as the result of the failure of the Prime Contractor to make payment to a Subcontractor, Vendor and/or Supplier, such documents will be immediately sent to the Office of Legal Services.

The Office of Legal Services will thereafter request that the Georgia Law Department send out the form letter informing the parties involved that liens cannot be legally placed upon Department property.

C. Nonpayment or Delayed/Late Payment Allegations from a Subcontractor

Please follow this policy where a Subcontractor contacts the Department with a concern regarding: (1) non-payment or (2) delayed/late payment. Nonpayment does not include issues involving retainage. A delayed/late payment occurs where the Prime Contractor has not paid its Subcontractor within ten (10) calendar days from receipt of payment made to the Prime Contractor by the Department, in accordance with the Prompt Payment Special Provision.

1. FORWARD. All allegations made to the Department by a Subcontractor regarding non-payment or delayed/late payment should be forwarded to the appropriate Area Engineer, with a copy to the Office of Legal Services and Construction Claims. The EEO office should also receive a copy if a DBE Subcontractor has made the nonpayment or delayed/late payment allegation.
2. GET WRITTEN DETAILS FROM SUBCONTRACTOR. If the initial contact by the Subcontractor did not provide enough information to evaluate their allegation, the Area Engineer should request a letter in writing from the Subcontractor to the Department which details the relevant and pertinent facts as understood by the Subcontractor, including the project number, name of the project manager, and details of the work involved. This letter should include any documents or correspondence which the Subcontractor believes are pertinent.

If the Subcontractor refuses to supply a written explanation of its allegations of nonpayment or delayed/late payment, the Area Engineer should notify the District Construction Engineer and the State Construction Office. This ends the investigation of the matter for the Area Engineer.

3. **SEND COPY OF PAYMENT BOND TO THE SUBCONTRACTOR.** Ask the Construction Claims for a copy of the Payment Bond and then send a copy of the Payment Bond to the Subcontractor. This should be done regardless of whether the subcontractor asked for a copy of the Payment Bond.
4. **SIMULTANEOUSLY: (1) VERIFY THAT PAYMENT HAS BEEN MADE TO THE PRIME CONTRACTOR; AND (2) DETERMINE WHETHER A REQUEST FOR APPROVAL TO WITHHOLD FUNDS HAS BEEN MADE AND APPROVED.**
 - i. **VERIFICATION THAT PAYMENT HAS BEEN MADE TO THE PRIME CONTRACTOR.** Obtain and review the pertinent construction report in order to verify that the work alleged to have been completed by the Subcontractor has been approved for payment by the Department and that ample time has passed for the Prime Contractor to be paid. Allow ten (10) days for processing by accounting for the Prime Contractor to receive a payment from the Department.

If payment has not been approved by the Department, or not enough time has passed to allow payment to be made to the Prime Contractor and then payment to the Subcontractor, inform the Subcontractor of such in writing with a copy to the State Construction Office. This ends the investigation of the matter.

- ii. **DETERMINE WHETHER A REQUEST FOR APPROVAL TO WITHHOLD FUNDS HAS BEEN MADE AND APPROVED.** Review the project correspondence to determine if a request for approval to withhold payment to the Subcontractor has been received from the Prime Contractor and the Department's response to such request.

If the Department approved the Prime Contractor's request to withhold payment to the Subcontractor, advise the subcontractor of this in writing with a copy to the State Construction Office. This ends the investigation of the matter.

6. **SEVEN DAY LETTER TO PRIME CONTRACTOR.** The Area Engineer, with coordination with the Office of Legal Services and Construction Claims, should send a letter to the Prime Contractor using the form attached.
7. **AREA ENGINEER RECOMMENDATION.** The Area Engineer will review the submitted response from the Prime Contractor and make a recommendation to the District Construction Office and the State Construction Office for further action. This further action may include (1) approving a request to withhold monies to the Subcontractor; (2) withholding future monies due to the Prime Contractor on the project; (3) beginning the default process; or (4) closing the matter

if proof of payment to the Subcontractor has been satisfactorily made. If no response is submitted, the Area Engineer will inform the State Construction Office.

8. NEXT STEPS. The District Construction Office, the State Construction Office, Construction Claims, and/or the Office of Legal Services shall determine what next steps to take in light of the recommendation made by the Area Engineer.

D. Nonpayment Allegations from a Vendor/Supplier

1. Request a letter in writing from the Vendor/Supplier to the Department which details the relevant and pertinent facts as understood by the Vendor/Supplier. This letter should include any documents which the Vendor/Supplier believes are pertinent.

If the Vendor/Supplier refuses to supply a written explanation of their allegations of nonpayment, the Area Engineer should notify the District Construction Engineer and the State Construction Office. This ends the investigation of the matter for the Area Engineer.

2. Obtain and review the pertinent construction report in order to verify that the item alleged to have been completed by the Vendor/Supplier been approved for payment by the Department and that ample time has passed for the Prime Contractor to be paid. Allow ten (10) days for processing by accounting for the Prime Contractor to receive a payment from the Department.

If payment has not been approved by the Department, or not enough time has passed to allow payment to be made to the Prime Contractor, inform the Vendor/Supplier of such in writing. This ends the investigation of the matter.

3. If payment has been made to the Prime Contractor and if enough time has passed that payment to the Vendor/Supplier should have been made, provide the Vendor/Supplier with a written response advising that by copy of your reply, Construction Claims has been notified and will provide the Vendor/Supplier with a copy of the Prime Contractor's Payment and Performance Bond. Copy the State Construction Office and Construction Claims on your reply.
4. Construction Claims will provide a copy of the Payment and Performance Bond to the Vendor/Supplier.

DATE

Via Certified Mail RRR # XXXXX
Prime Contractor

Via Certified Mail RRR # XXXXX
Surety

Re: Project ID
Bond Number: XXXXXX

Dear Prime Contractor:

The Georgia Department of Transportation (“Department”) has received verbal communication and the enclosed documentation concerning Prime Contractor’s nonpayment for labor, services, equipment, or materials supplied by Subcontractor for the above referenced Project. Subcontractor is an approved subcontractor for Prime Contractor and is performing work on the above referenced project.

The prompt payment of subcontractors is specifically addressed in the Prompt Payment Special Provision which provides in pertinent part:

Prime Contractors, who sublet a portion of their work, shall pay their subcontractors for satisfactory performance of their contracts no later than 10 calendar days from receipt of each payment made to them.

Any delay or postponement of payment among the parties may take place only for good cause with prior written approval from the Department.

If the contractor is found to be in noncompliance with these provisions, it shall constitute a breach of contract. . . . If correction action is not taken, it may result in termination of the contract.

In addition, the Georgia Prompt Payment Act is found in O.C.G.A. § 13-11-1 *et seq.*

Approval to withhold payment to this subcontractor has not been granted by the Department. Therefore, Prime Contractor is hereby directed to provide a detailed written response to these allegations of nonpayment to the Department within seven (7) days of receipt of this letter. This letter shall indicate either: (a) any outstanding payment alleged owed to Subcontractor has been paid as demonstrated with a copy of a cancelled check or other electronic funds transfer confirmation; or (b) detailed reasons to support withholding payment to Subcontractor for the Department’s consideration.

Failure to respond as directed within seven (7) days of receipt of this letter will result in the Prime Contractor deemed to be in breach of the contract and further payments for any work performed may be withheld until corrective action is taken. Termination may also result if corrective action is not taken.

All other rights and remedies of the Department, arising under the Contract or existing by operation of law, are reserved by the Department.

Sincerely,

XXXXXXXXXX
Area Engineer

Encls.

cc: State Construction Office
Construction Claims
Office of Legal Services
District Engineer
District Construction Engineer
EEO Office (where appropriate)
Project File

SUBCONTRACTOR