



**DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM
FOR
FEDERAL PROJECTS**

FEBRUARY 2012

AGENDA ITEM NO.

COUNCIL MEETING 02/16/12

APPROVED BY

DEPARTMENT DIRECTOR


CITY MANAGER

February 16, 2012

FROM: KAREN BRADLEY, Assistant Controller
Finance Department 

THROUGH JASON MACDONALD, Manager
Purchasing Division 

BY: BETH MCDONELL, Program Coordinator
DBE Program 

SUBJECT: ADOPT A RESOLUTION REVISING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR FEDERALLY ASSISTED CONTRACTS; AND RESCINDING RESOLUTION 2000-248

RECOMMENDATION

Staff recommends that the City Council approves the attached 2012 Disadvantaged Business Enterprise (DBE) program revised to be in compliance with recent changes to federal regulations.

EXECUTIVE SUMMARY

A condition to the City's receipt of federal financial assistance is the requirement to comply with the DBE requirements set out in Title 49 of the Code of Federal Regulations (CFR) Parts 23 and 26. In order to conform with the recent changes to 49 CFR Parts 23 and 26, Council approval of the attached DBE program is necessary. These changes have been made to foster small business participation in local federally funded contracting. The Airport Department through the Federal Aviation Administration (FAA), the Transportation Department through the Federal Transit Administration (FTA) and Department of Public Works through the Federal Highway Administration (FHWA) all receive federal funds from US Department of Transportation (DOT) subject to this requirement.

BACKGROUND

In August 2000, the City approved a new DBE program to conform with the rules of the US Department of Transportation pursuant to Title 49 of the Code of Federal Regulations (49 CFR, Parts 23 and 26) which applies to projects funded by the Federal Highway Administration (FHWA); Federal Aviation Administration (FAA); and the Federal Transit Administration (FTA). In August 2004, Council amended the program to include a prompt payment clause.

Recent changes were made to the regulations that go into effect on February 28, 2012 adding provisions to foster small business participation. Additional rules improve the administration of the DBE program by increasing accountability for recipients with respect to meeting overall goals, modifying and updating certification requirements, adjusting personal net worth thresholds for inflation and improving post-award oversight.

REPORT TO THE CITY COUNCIL
RESOLUTION REVISING THE (DBE) PROGRAM FOR FEDERALLY ASSISTED CONTRACTS
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The accompanying resolution approves and adopts the updated DBE program revised February 2012 and rescinds resolution 2000-248 and 2004-291 under which the currently operative DBE program was adopted and subsequently amended.

FISCAL IMPACT

If Council were to not approve this resolution, the US DOT could eventually reduce or restrict funds received by the City for projects related to transportation.

JBM, 2/3/2012

Attachments:
Resolution for Adoption
Program Manual

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF
FRESNO ADOPTING A REVISED DISADVANTAGED
BUSINESS ENTERPRISE (DBE) PROGRAM FOR
FEDERALLY ASSISTED CONTRACTS; AND RESCINDING
RESOLUTION 2000-248.

WHEREAS, as a public employer, the City of Fresno recognizes that it has a particular responsibility to promote the growth of small businesses, including Disadvantaged Business Enterprises (DBEs); and

WHEREAS, the City of Fresno is a recipient of federal financial assistance from the U.S. Department of Transportation (DOT) operating administrations, Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) and Federal Transit Administration (FTA); and

WHEREAS, as a condition to receiving such assistance, the City of Fresno is required to comply with 49 CFR, Parts 23 and 26, including implementation and of a DBE Program and providing DOT updates representing significant changes in the DBE Program; and

WHEREAS, DOT modified 49 CFR Part 26 in January 2011 necessitating revisions to the current DBE Program adopted by the City pursuant to Resolution 2000-248, which revisions are reflected in the DBE Program revised February 2012; and

WHEREAS, such revisions include a new small business element to facilitate competition by small business concerns which is required to be included in the DBE Program and submitted to the appropriate operating administration(s) by February 28, 2012; and

WHEREAS, 49 CFR Parts 23 and 26 require that the City establish an overall goal every three years for DBE participation in U.S. Department of Transportation (DOT) assisted contracts for incorporation into the Program subject to the schedule established by the respective DOT operating administration; and

WHEREAS, all FHWA funded projects are through the California Department of Transportation (Caltrans) which requires City's DBE Program to include the Caltrans' Disadvantaged Business Enterprise Implementation Agreement for Local Agencies; and

WHEREAS, such Agreement requires the City to establish an annual anticipated DBE participation level (AADPL).

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The Council hereby approves and adopts the DBE Program for Federal Projects, revised February 2012.

2. The current overall goals and methodology for establishing the overall DBE goals is set forth in the DBE Program. The overall goals and AADPL are based upon the federal fiscal year which is October 1 through September 30.

3. The DBE Liaison Officer, with the approval of the City Manager, is hereby authorized to amend the DBE Program to reflect any changes to, or establishment of, the overall DBE goals and AADPL by the DBE Liaison Officer; to reflect any changes by the California Department of Transportation to the Disadvantaged Business Enterprise Implementation Agreement for Local Agencies; and to the extent required by any applicable amendment of federal, state or local laws or regulations, including the Code of Federal Regulations modifying DBE Program requirements, which amendment shall become part of the City's DBE Program.

4. The Council hereby rescinds Resolution 2000-248 in its entirety.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting thereof, held on the ____ day of _____, 2012.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2012
Mayor Approval/No Return: _____ 2012
Mayor Veto: _____, 2012
Council Override Vote: _____, 2012

YVONNE SPENCE, CMC
City Clerk

BY: _____
Clerk/Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: *Nancy A. Algier* 7/7/12
Nancy A. Algier Date
Senior Deputy

NAA:elb [57972elb/naa] Reso 2/03/12

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POLICY STATEMENT

The City of Fresno has established a Disadvantaged Business Enterprise (DBE) Program in accordance with the regulations of the U.S Department of Transportation (DOT), 49 CFR Part 26 and 49 CFR Part 23. The City of Fresno in the past has received federal financial assistance from the Department of Transportation and as a condition of receiving this future/ongoing assistance, the City of Fresno has signed an assurance that it will comply with 49 CFR Part 26 (part 26) and 49 CFR Part 23 (part 23).

It is the policy and commitment of the City of Fresno to ensure that DBEs as defined in part 26 and part 23, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for contracts and subcontracts relating to construction, professional services, supplies, equipment, materials and other services for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that meet 49 CFR Part 26 and 49 CFR Part 23 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
7. To outreach to local firms and encourage certification and participation in the DBE Program.

The City Manager of the City of Fresno has the general responsibility for implementing Council policy.

The Director of Finance, 2600 Fresno Street, Room 1030, Fresno, CA 93721, (559-621-7001) has been designated the DBE Liaison Officer. The DBE Liaison Officer has direct, independent access to the City Manager concerning DBE Program matters. The City shall ensure that the DBE Liaison Officer is at all times provided with staff adequate and sufficient to administer the DBE Program in compliance with 49 CFR Part 26 and 49 CFR Part 23, including a DBE Program Coordinator. The DBE Liaison Officer is responsible for implementing and administering 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 City in its financial assistance agreements with the DOT.

The DBE operating expenditures participation shall be delegated and administered directly by the departments which, at minimum, contribute to the overall goals of the City as a whole.

This policy statement will be circulated throughout the City of Fresno departments and the community in general. Copies of this policy will be sent to DBE and to non-DBE business communities that perform work for us on DOT-assisted contracts.

The Council of the City of Fresno hereby adopts its policy statement expressing a commitment to use Disadvantaged Business Enterprises (DBEs) and other small businesses in all aspects of contracting financed in whole or in part by the Federal Government, U.S. Department of Transportation (DOT).

The Council shall establish by Resolution the basic policy of the City relative to the Disadvantaged Business Enterprise Program.

Mark Scott, City Manager

Date

SUBPART A – GENERAL REQUIREMENTS

A.1 THE OBJECTIVES OF THE DBE PROGRAM

Objectives of the DBE Program are:

To aggressively seek out and identify firms owned and controlled by socially and economically disadvantaged individuals who are qualified to provide the City of Fresno with required goods, materials, supplies and services needed for the City's operations.

To develop and implement information and communication programs and procedures geared to acquaint prospective DBEs with the City of Fresno's contracting and procurement procedures and requirements.

To develop the necessary interdepartmental relationships within the City of Fresno, which will promote, foster, and facilitate the implementation of this program.

To contribute to the economic stability and growth of DBEs in the Fresno metropolitan area.

To attain the annual DBE overall goals as established with the Federal Transportation Administration (FTA), Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and any other federal agency requiring goal submission, and to meet all Federal guidelines in the administration of this program.

A.2 APPLICABILITY

The City of Fresno is the recipient of federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

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

The City of Fresno is the recipient of federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, II and V of the TEA-21, Pub. L. 105-178.

A.3 DEFINITIONS

(The terms below shall be defined as follows unless inconsistent with or in conflict with any applicable provisions of federal law or regulation including 49 CFR Part 26, § 26.5 and 49 CFR Part 23, § 23.3, in which case the then current federal law or regulation shall control).

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121, except that the provisions of SBA regulations concerning affiliation in the context of joint ventures (13 CFR § 121.103(f)) do not apply to part 23.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

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

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

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

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

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

Car dealership means, for purposes of part 23, an establishment primarily engaged in the retail sale of new and/or used automobiles. Car dealerships frequently maintain repair departments and carry stocks of replacement parts, tires, batteries, and automotive accessories. Such establishments also frequently sell pickup trucks and vans at retail. In the standard industrial classification system, car dealerships are categorized in NAICS code 441110.

Concession means, for purposes of part 23, one or more of the types of for-profit

businesses listed in paragraph (1) or (2) of this definition:

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

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

Example to paragraph (2): A supplier of goods or a management contractor maintains its office or primary place of business off the airport. However the supplier provides goods to a retail establishment in the airport; or the management contractor operates the parking facility on the airport. These businesses are considered concessions for purposes of part 23.

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

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

(i) Leases.

(ii) Subleases.

(iii) Permits.

(iv) Contracts or subcontracts.

(v) Other instruments or arrangements.

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

(6) Other examples of entities that do not meet the definition of a concession include flight

kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, telephone and electric service to the airport facility, holding companies, and skycap services under contract with an air carrier or airport.

Commercially useful function means to be responsible for the execution of a distinct element of work of the contract and for carrying out this responsibility by actually performing, managing and supervising the work involved; and to 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. It further has the same meaning as in part 26, § 26.55(c), except that the requirements of §26.55(c)(3) do not apply to concessions under part 23.

Compliance means that a recipient has correctly implemented the requirements of part 26.

Concessionaire means, for purposes of part 23, a firm that owns and controls a concession or a portion of a concession.

Construction means to build, form, or devise by fitting parts or elements together systematically and the process of supervision, inspection, building, and all activities related to the construction or reconstruction of projects. This includes construction and reconstruction of streets, buildings, the repair of buildings, demolition, and rehabilitation.

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 part 26 and part 23, a lease is considered to be a contract.

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

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).

Direct ownership arrangement means, for purposes of part 23, a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

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

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

Good faith efforts means efforts to achieve a DBE goal or other requirement of part 26 or part 23 which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill or meet the program requirement.

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

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law; and, for purposes of part 23, also means brother-in-law, sister-in-law, or registered domestic partner.

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

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. For purposes of part 23, joint venture entities are not certified as airport concession DBEs.

Management contract or subcontract means, for purposes of part 23, an agreement with a recipient or another management contractor under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the recipient. The managing agent generally receives, as compensation, a flat fee or a percentage of the gross receipts or profit from the business activity. For purposes of this definition, the business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at an airport subject to part 23, and be engaged in the sale of consumer goods or provision of services to the public.

Material amendment means, for purposes of part 23, a significant change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope of the concession privilege. Examples of nonmaterial amendments include a change in the name of the concessionaire or a change to the payment due dates.

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

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and for purposes of part 26, whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of part 26 or part 23.

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

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence; and, for purposes of part 23, other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her airport concession DBE firm (or have in fact been encumbered to support existing financing for the individual's airport concession DBE business), to a maximum of \$3 million. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary airport means a commercial service airport that the Secretary determines to have more than 10,000 passengers enplaned annually.

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

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

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

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which part 26 or part 23 applies.

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

Race-neutral means a measure or program that is, or can be, used to assist all small businesses. For the purposes of part 26 and part 23, *race-neutral* includes gender-neutrality.

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

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

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

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

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

Small business or **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 part 26, § 26.65(b). For purposes of part 23, it means a for profit business that does not exceed the size standards of part 23, § 23.33.

Small hub airport means a publicly owned commercial service airport that has a number of passenger boardings equal to at least 0.05 percent of all passenger boardings in the United States but less than 0.25 percent of such passenger boardings. The Fresno International Airport is a small hub airport.

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 a recipient 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 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 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.

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

Underutilized DBE or UDBE 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 (except Hispanic American males, Subcontinent Asian males and as otherwise excluded by the California Transportation Department for FHWA-assisted projects) 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 (except Hispanic American males, Subcontinent Asian males and as otherwise excluded by the California Transportation Department for FHWA-assisted projects) individuals who own it.

You refers to a recipient, unless a statement in the text of part 26 or part 23 or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

A.4 NON-DISCRIMINATION REQUIREMENTS

The City of Fresno will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by 49 CFR parts 23 and 26 on the basis of race, color, sex, or national origin.

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

A.5 RECORD KEEPING REQUIREMENTS

The City will report DBE awards, commitments and payments on the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to part 26, at the intervals stated on the form.

The City of Fresno will report DBE participation to DOT as follows (part 26, § 26.11(b); part 23, §23.27):

As an FAA recipient, the City of Fresno will submit annually DOT Form 4630, as modified for use by FAA recipients.

As an FTA recipient, the City of Fresno will report DBE participation on a quarterly basis, using DOT Form 4630. These reports will reflect payments actually made to DBEs on DOT-assisted contracts.

As an FHWA subrecipient, the City of Fresno does not report DBE participation on a quarterly basis, using DOT Form 4630.

The DBE Program Coordinator shall prepare the required quarterly/annual compliance reports for the various Operating Administrations on the forms provided by the respective Operating Administration. These reports shall be coordinated with each department.

The DBE Program Coordinator shall keep on file for a period of three years, reports, records and DBE plans that will enable the respective Operating Administration to evaluate compliance with the federal requirements.

The DBE Program Coordinator and the affected department representative may determine during a fiscal year that it is necessary or appropriate to revise that year's goals.

A.5.1 General Maintenance of Records

Each Department, in conjunction with the DBE Program Coordinator, shall develop a comprehensive record keeping system which will facilitate the monitoring and progress assessment of the DBE Program. This system will also provide necessary data for

compliance reviews and uniform reporting requirements. Departments shall provide copies of the records to the DBE Program Coordinator who shall be the custodian in charge of maintaining records showing procedures which have been utilized to implement this DBE Program including outreach, technical assistance efforts and referrals, and communication programs.

The records shall also show the contract awards to DBEs including names, addresses, phone numbers, nature of the work, total value of the contract/subcontract and the overall percentage utilization of DBE awards. Records will provide data of actual DBE attainments. DBE participation will be credited toward overall goals only when payments are actually made to DBE firms. The contract awards to DBEs shall be measured against the overall contracts awarded annually and the overall DBE goals.

The records shall be provided to the DBE Program Coordinator on an annual basis for construction, professional services and other procurements, including procurements solicited under City of Fresno Charter Section 1208 for competitive bidding.

Whenever possible, the DBE Program Coordinator shall obtain oral or written reports from contractors on their progress in meeting DBE contractual obligations; and oral or written reports from DBEs to verify that they have performed the work committed to DBEs at contract award, including payments actually made to DBE firms. Final utilization reports will be required to be completed by the contractor within 30 days of Notice of Completion. Reports will be on a form provided by the City.

A.5.2 Maintenance of Records by Fresno Area Express (Fax) for FTA Funded Projects

The development of a comprehensive monitoring system enables the DBE staff to evaluate progress in achieving DBE overall goals, determine the priorities for allocating DBE staff time, and identify problem areas in a timely fashion. In order to carry out this monitoring, a record keeping system should be developed which will identify and assess DBE contract awards and other DBE information. This data will facilitate monitoring for internal management purposes, as well as provide data necessary for FTA compliance reviews and uniform reporting requirements.

Specifically, FAX should maintain records showing procedures which have been adopted to comply with the requirements of the FTA DBE Circular 1165.I and these instructions, including but not limited to:

- Outreach techniques;

- Technical assistance efforts and referrals, and communications programs;

- Maintaining copies of all relevant correspondence, minutes of meetings, and lists of attendees at conferences and workshops;

- Documenting awards to DBEs, including at a minimum:

- Names of DBE contractors and subcontractors;

- Nature of work;

Total value of the contract or subcontract; and

The amount of DBE awards as a percentage of all contracts and subcontracts awarded.

Measuring awards against projected DBE awards (to assist in this effort, the City should obtain regular reports from prime contractors on their progress in achieving contractual DBE obligations); and

Specifying efforts to identify and award contracts to DBEs including but not limited to:

Number and identity of DBEs contacted and invited to quote/bid by contract; and

Number and identity of DBEs responding by contract.

A.5.3 Meeting FTA Reporting Requirements

FAX shall ensure compliance with FTA reporting requirements. The scope and intent of FTA's reporting requirements can be found in the following subsections of Chapter III, Section D, Guidelines for Project Administration, of the External Operating Manual:

- Accounting System and Internal Controls, pages 111D through 111D-6;
- Financial Reporting Requirements, page 111D-7;
- Other Financial Reporting Requirements, page 111D-7A;
- Record Retention, page 111D-I.
- These uniform DBE reporting requirements have been designed to be part of the quarterly financial status report which is submitted to the appropriate FTA Regional Office. The appropriate FTA Regional Civil Rights Officer of the Headquarters Office of Civil Rights will be responsible for reviewing the DBE portion of such reports.
- The quarterly report should include, as a minimum, the following for each active FTA assisted project for the previous calendar quarter:
 - Total FTA share;
 - Number of contracts awarded by budget line item;
 - Number, description, and dollar value of contracts awarded to DBEs by budget line item;
 - Number, description, and dollar value of all subcontracts, regardless of tier, awarded to DBEs by budget line item;
 - Cumulative number and dollar amount of all contracts and subcontracts, regardless of tier, awarded to DBEs under active grant projects.
 - Procurement award by ethnic group.
- Quarterly reports should include the following information for the ensuing quarter by budget line item:
 - An estimate of project funds required for activities to be undertaken under each FTA grant project;
 - An estimate of the cumulative number, description, and dollar amount of contracts to be awarded;
 - An estimate of the cumulative number, description, and dollar amount of contracts to be awarded to DBEs; and

- An estimate of the attainment of DBE percentage goals. Records will provide data of actual attainments. DBE participation will be credited toward overall goals only when payments are actually made to DBE firms.
- These computations shall be submitted to the City of Fresno DBE Program Coordinator for the addition of any construction project DBE awards and commitment activity. Fresno Area Express staff is responsible for assuring that the quarterly report is completed and submitted to the FTA Regional Office.

A.6 BIDDERS LIST

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

The City of Fresno will collect this information as follows:

As part of the bidding process, the City of Fresno will require that each contractor list their subcontractors along with the type of work being performed. The three lowest bidders will be required to submit contact information, business size capacity and type of work performed for each subcontractor listed at bid time. The City of Fresno will compile a bidders list from the contractors that bid on projects by type, federally funded or non-federally funded, along with all of the subcontractors, DBE's and other small businesses listed. **See Attachment 1.**

A.7 ANNUAL EVALUATION

At the end of each fiscal year, each department receiving federal funds shall submit a written expenditure report to the DBE Liaison Officer in a form satisfactory to the DBE Liaison Officer.

The DBE Program Coordinator shall prepare annual reports for departments receiving federal funds and the overall DBE goals for the procurement category of equipment, materials, supplies and professional services. The DBE Liaison Officer shall furnish the City Manager with a consolidated report for presentation to the Council.

A.8 FEDERAL FINANCIAL ASSISTANCE AGREEMENT

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

The City of Fresno shall not discriminate on the basis of race, color,

national origin, or sex in the award and performance of any DOT assisted contract or in the administration of its DBE Program or the requirements of 49 CFR parts 23 and 26. The recipient shall take all necessary and reasonable steps under 49 CFR parts 23 and 26 to ensure nondiscrimination in the award and administration of DOT assisted contracts. The recipient's DBE Program, as required by 49 CFR parts 23 and 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 City of Fresno of its failure to carry out its approved program, the Department may impose sanction as provided for under parts 23 and 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

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

A.9 CONTRACT ASSURANCE

The City of Fresno will also ensure that the following clause is placed in every DOT-assisted contract and subcontract:

The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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.

The City of Fresno will also include the following assurances in all concession agreements and management contracts executed with any firm in accordance with part 23:

This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part

23, that it enters and cause those businesses to similarly include the statements in further agreements.

A.10 ATTACHMENTS

All attachments referenced within this DBE Program are attached and incorporated by reference herein.

A.11 PROGRAM PERIOD

This DBE Program shall be in full force and effect immediately upon Council approval and shall continue in effect unless rescinded by Council, or unless amended by Council or by the DBE Liaison Officer as may be authorized by Council.

SUBPART B – ADMINISTRATIVE REQUIREMENTS

B.1 DBE PROGRAM UPDATES

Since the City of Fresno receives grants of \$250,000 or more for airport planning or development, \$250,000 or more in FTA planning capital, and /or operating assistance in a federal fiscal year, and grants as otherwise authorized by a statute to which part 26 applies, the City of Fresno will continue to carry out this DBE Program until all funds from DOT financial assistance have been expended. The City of Fresno will provide to DOT updates representing significant changes in the DBE Program.

B.2 DESIGNATION OF DBE LIAISON OFFICER

Under policy set by the Council of the City of Fresno, the City Manager has designated the Director of Finance as the DBE Liaison Officer (DBELO).

The DBELO, individually or through his/her designee shall meet periodically to review the DBE Program and any proposed changes with City department Directors or their designees to: (1) review implementation of the DBE Program, (2) ascertain the progress and achievements of the Program, (3) identify problems and/or deficiencies, and (4) make recommendations concerning changes and improvements in the DBE Program.

B.3 DUTIES OF THE DBE LIAISON OFFICER

The DBELO is responsible for developing, implementing and monitoring the DBE Program in coordination with other appropriate officials. The DBELO provides general direction to support staff in administering the DBE Program for federal projects. In that capacity, the DBELO is responsible for implementing all aspects of the DBE Program and ensuring that the City of Fresno complies with all provision of 49 CFR Part 26 and Part 23. The DBELO has direct, independent access to the City Manager concerning DBE program matters. An organization chart displaying the DBELO's position in the organization is found in **Attachment 2**.

The DBELO has a staff of one, the DBE Program Coordinator, to assist in the administration of the DBE 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. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Analyzes and prepares a quarterly report on the City of Fresno's progress toward attainment and identifies ways to improve progress of achieving the stated goal for each department.
7. Advises the City Manager and City Council on DBE matters and achievement.
8. Participates in pre-bid meetings.
9. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
10. Plans and participates in DBE training seminars.
11. Certifies DBEs according to the criteria set by DOT and acts as liaison to the Uniform Certification Process in California.
12. Provides outreach to DBEs and community organizations to advise them of opportunities.
13. Maintains the City of Fresno's updated directory on certified DBEs.

B.4 DUTIES OF THE FRESNO AREA EXPRESS SUPPORT STAFF

The responsibility for the implementation and administration of the Fresno Area Express DBE participation program shall rest with the support staff, who are appointed by the Director of Transportation.

Specific duties of staff shall include, but are not limited to the following:

- Actively seeking and identifying DBEs who can supply goods, materials, supplies, and services for Fresno Area Express operating requirements.
- Managing, and implementing the Fresno Area Express DBE participation program on a day-to-day basis.
- Carrying out technical assistance activities for DBEs.
- Disseminating information on available business opportunities for Fresno Area Express operations.
- Maintaining liaison with other City departments for contract compliance purposes.
- Preparing and presenting oral and written reports and responses to requests for information.
- Maintaining statistical data to report how goals are being met for the procurement of operating goods and services.

- Establishing DBE goals for the Fresno Area Express operation expenditures.

B.5 RESPONSIBILITIES OF OTHER PERSONNEL

The City Manager or his/her designee will evaluate the DBE compliance performance of all department Directors receiving DOT financial assistance.

B.6 DUTIES OF ALL DEPARTMENT DIRECTORS

All department Directors are responsible for the management and implementation of the DBE Program within their respective departments. The Directors of all City departments receiving DOT financial assistance shall provide general direction to support staff in administering the DBE Program as it relates to their department's operating expenditures and shall designate a staff person to coordinate DBE activities with the DBE Program Coordinator.

B.7 DBE FINANCIAL INSTITUTIONS

It is the policy of the City of Fresno to thoroughly 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. The City of Fresno has thoroughly investigated to identify such institutions and determined the following: There are none available in the local area.

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

B.8 PROMPT PAYMENT MECHANISMS

The City of Fresno will include the following provisions in each DOT-assisted prime contract:

The Contractor shall contain the following provisions in each of its subcontracts and require its subcontractors to pay their subcontractors in the same manner and to contain these provisions in each of their contracts for all tiers of subcontracting.

All Contracts and Subcontracts (all tiers), shall contain the following provisions:

Prompt Progress Payment to Subcontractors. A prime contractor or subcontractor shall pay a subcontractor not later than 7 days of receipt of each progress payment in accordance with Section 7108.5 of the California

Business and Professions Code concerning prompt payment to subcontractors. The 7 days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the City's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanction and other remedies of that section. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the prime contractor, deficient subcontractor performance, or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors.

Prompt Payment of Withheld Funds to Subcontractors. The City shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from a subcontractor within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the City. Any delay or postponement of payment may take place only for good cause and with the City's prior written approval. Any violation of these provisions shall subject the violating prime contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. These requirements shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the prime contractor or subcontractor in the event of a dispute involving late payment, or nonpayment by the prime contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This provision applies to both DBE and non-DBE subcontractors.

B.9 DIRECTORY

The City of Fresno participates in a combined statewide 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. The type of work is listed by using the most specific NAICS code available to describe each type of work. The City of Fresno makes the Directory available as follows: on-line at www.californiaucp.org or by contacting the DBELO

B.10 OVERCONCENTRATION

The City of Fresno has not identified that overconcentration exists in the types of work that DBEs perform. If it is determined that DBE firms are so over-concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, the City will devise measures to address this over-concentration and obtain the approval of the respective Operating Administrations.

B.11 BUSINESS DEVELOPMENT AND MENTOR-PROTÉGÉ PROGRAMS

The City of Fresno has not established a business development program. The City of Fresno participates in the mentor-protégé program established by the California Department of Transportation and approved by FHWA, for DOT-assisted contracts through FHWA. Another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm. Only firms certified as DBEs before they are proposed for participation in the mentor-protégé program are eligible to participate in such program. During the course of the mentor-protégé relationship, no DBE credit will be awarded to a non-DBE mentor firm for using its own protégé firm either for more than one half of its goal on any contract let by the City, or for more than every other contract performed by the protégé firm. For purposes of making determinations of business size under part 26, protégé firms are not treated as affiliates of mentor firms, when both firms are participating under a mentor-protégé program.

B.12 SMALL BUSINESS PARTICIPATION ELEMENT

A requirement of good faith effort implementation of the DBE Program, includes the active implementation of DBE Program requirements to foster small business participation. Contracting requirements shall be structured to facilitate competition by small businesses, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation as prime contractors or subcontractors.

In meeting a portion of the City's overall goal projected to meet through race-neutral measures, a reasonable number of prime contracts are to be of a size that small businesses, including DBEs, can reasonably perform.

Bidders on design-build contracts for megaprojects shall be required to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

The DBE Program is open to all small businesses, including DBEs, regardless of their location, and there are no limits on the number of contracts that can be awarded to firms participating in the DBE Program. Every effort will be made to avoid creating barriers to

the use of new, emerging or untried businesses.

B.12.1 Increasing DBE and Other Small Business Participation

Assistance shall be provided small businesses, including DBEs, in overcoming barriers to DBE Program participation in all methods of procurement. This assistance should be offered directly by the departments, as well as by referral to other assistance agencies, through established, comprehensive, and continuous programs. Businesses requiring management and technical assistance can be identified through a questionnaire, personal experience with these businesses, and unsolicited requests for assistance.

The departments and DBE Program Coordinator shall offer the following assistance directly to DBEs and other small businesses:

Information on its organization and contractual needs;

Instructions for preparation of bid specifications, procurement policy procedures, and general bid requirements;

Opportunity to review and evaluate successful bid documents of previous, similar procurements;

Information on specific reasons for unsuccessful bids through debriefing sessions;

Projected procurement opportunities;

Instruction on job performance requirements;

Referrals to firms who offer advice and assistance through mentor-protégé programs;

Monitor and insure that prime contractors make prompt payments to DBE and other small business subcontractors;

This data should be disseminated through written materials, seminars, workshops, and specialized assistance to individual firms.

In addition, the departments and DBE Program Coordinator may refer DBEs and other small businesses to other agencies for financial management, personnel management, and other technical assistance related to the specific needs of DBEs or other small businesses. The departments should maintain a list of agencies offering these types of assistance with a description of the services offered. The staff should also familiarize these agencies with the nature of the City's operations and procurement needs.

B.12.2 Formal Bids and Requests for Proposals

The outreach and techniques that should be utilized by departments and the DBE Program Coordinator to encourage DBE and other small business participation in the formal bid process include:

Developing bid packages and requests for proposals so as to increase potential DBE and other small business participation. In addition to that provided above in this section, this may take the form of using certain types of materials and methods and breaking down large projects to include smaller contracts for work that small businesses, including DBEs, can reasonably perform;

Encouraging the formation of joint ventures between DBEs and other small businesses which provide opportunities for DBEs and other small businesses to gain experience;

Considering purchasing supplies and/or leasing the required equipment for a job and then contracting only for the expertise required to perform the work;

Providing specifications and Request for Proposals in a timely manner, in order to allow DBEs and other small businesses adequate time to develop responsive and responsible bids, quotations, and proposals;

Using the least complicated bid forms;

Holding a pre-bid conference to emphasize the DBE and other small business requirements, to explain the forms that must be submitted with the bid regarding DBE and other small business participation, documentation required outlining efforts to obtain DBE and other small business subcontractors and joint venture partners, the use and availability of the DBE Directory and small business directory and to answer any questions;

Placing bid notices in pertinent trade papers, DBE and small business focus newspapers or publications allowing adequate time for development of responsive bids;

Sending bid notices to DBE and small business trade associations, technical assistance agencies, economic development groups for DBEs and other small businesses, and DBE's and other small businesses with capabilities relevant to the bid notice;

Making available bid specifications to DBE and other small business contractor associations and technical assistance agencies; and

Affording a lead time of not less than 10 days, unless otherwise required by the respective Operating Administration for advertisement of all invitations for bids and requests for proposals in order that all firms have ample time to develop a complete bid package or proposal and secure necessary assistance.

Since DBE and small business trade associations, small business development agencies, and technical assistance agencies can be important resources for the DBE and Small Business Program, the departments and DBE Program Coordinator shall establish extensive contacts with these organizations. The departments and DBE Program Coordinator shall become familiar with the services and capabilities provided by these groups.

This data should be circulated through written materials, seminars, workshops, and specialized assistance to individual firms and coordinated in conjunction with the City's DBE and Small Business seminars. The various Chambers of Commerce and Business Development Centers will be used as a means of enhancing communications with DBEs and other small businesses.

B.12.3 Participation by DBEs and Other Small Businesses in Airport Concessions

The Airports Department has developed a DBE concession plan in accordance with the regulations of the U.S. Department of Transportation (DOT) 49 CFR, part 23.

All opportunities for concession/lease agreements with the Airports Department which are aviation related shall be administered pursuant to the DBE Concession Plan and the City's DBE Program.

DBEs with experience in the type of concession under consideration may, upon request, be sent a copy of the Notice of Concession/Lease Opportunity. Each Notice of Concession/Lease Opportunity shall be submitted for publication in newspapers of general circulation. Such notice shall also be sent to business technical assistance organizations and other appropriate and women business organizations.

Each Notice of Concession/Lease Agreement Opportunity, to the extent feasible, shall be submitted for publication at least 60 days prior to the award of such concession or lease agreement.

The Airports Department representative in conjunction with the DBE Program Coordinator shall actively seek out firms interested in concession/lease opportunities. If any such firms have not been officially certified as a DBE through the DBE Certification Process, the Airport Department representative shall refer that business to the DBE Program Coordinator. The Airports Department representative shall, upon request, provide technical assistance to any certified business expressing an interest in concession/lease opportunities.

Concession/lease agreements shall be subject to the City's overall goals for Disadvantaged Business Enterprises. The City will not use quotas in any way in the administration of the DBE program or to achieve DBE participation.

The Airports Department representative shall submit a written report to the DBE Program Coordinator on an annual basis, in a form satisfactory to the DBE Program Coordinator, addressing the progress made in obtaining certified DBE businesses as lessees and concessionaires at the Fresno Air Terminal.

B.12.4 Participation by DBEs and Other Small Businesses (FAX)

In addition to the procedures contained in this DBE Program, specific procedures applicable to FAX operations shall be used to ensure a level playing field for DBEs and other small businesses in procurement opportunities at FAX.

B.13 MONITORING AND ENFORCEMENT MECHANISMS

The City of Fresno will utilize the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Parts 23 and 26.

The City of Fresno will bring to the attention of DOT any false, fraudulent, or dishonest conduct in connection with the DBE Program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in part 26, § 26.109.

The City of Fresno will also consider similar action under our own legal authorities, including responsibility determinations in future contracts. **Attachment 3** lists the regulation, provisions, and contract remedies available to the City of Fresno in the event of non-compliance with the DBE regulation by a participant in our procurement activities.

B.13.1 Verification

The City of Fresno will provide a monitoring and enforcement mechanism to verify that work committed to DBEs at contract award is actually performed by the DBEs. This will be accomplished by the following:

- Requiring prime contractors to maintain records and documents of payments to DBEs for three years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of the City of Fresno or DOT. This reporting requirement also extends to any certified DBE subcontractor.
- The City of Fresno will perform interim audits of contract payments to DBEs. The audit will review payments to DBE subcontractors to ensure that the actual amount paid to DBE subcontractors equals or exceeds the dollar amounts stated in the schedule of DBE participation.
- In conjunction with monitoring contract performance, the City will certify in writing

that it has reviewed the contracting records and monitored work sites for the purpose of ensuring that work committed to DBEs at contract award or subsequently is actually performed by the DBEs to which the work was committed.

- The City of Fresno will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award or subsequently and compare this to the actual commitments made at the time of award or subsequently.

B.13.2 Non-Compliance with DBE Requirements

It is the intent of the City of Fresno that contractors, on construction or professional service contracts involving DBE subcontractors, shall diligently carry out and adhere to the DBE requirements as set forth in this DBE Program and in the subject contract. The failure of a contractor to comply with the requirements of this DBE Program shall be deemed a material breach of contract and, after due notice and opportunity to cure the breach is afforded the contractor, such breach may result in, among other remedies, termination by City of the awarded contract.

The City may include in the contract a requirement that liquidated damages be paid by a contractor who fails to comply with DBE requirements. Upon a final determination by the City of Fresno that a contractor has materially breached the DBE terms of his/her contract, and after due notice of this determination is given to the contractor, liquidated damages, on account of non-compliance with the DBE requirements, may be withheld by the City from progress payments, or the final payment, due to the contractor for work performed under the contract in question. In no event shall the amount of liquidated damages exceed the full dollar amount of the DBE subcontract which is the subject of the contractor's non-compliance with the DBE requirements.

SUBPART C: GOALS, GOOD FAITH EFFORTS, AND COUNTING

C.1 SET-ASIDES OR QUOTAS

The City of Fresno does not use set-asides or quotas in any way in the administration of this DBE program.

C.2 OVERALL GOALS

A description of the methodology to calculate the overall goal and the goal calculations can be found in **Attachment 4**. This Attachment to the DBE Program will be updated every three years based upon the then current schedule established by FAA and FTA and annually based upon the then current schedule established by FHWA through California Department of Transportation (Caltrans):

FAA - Current due date is August 1, 2014

FTA - Current due date is August 1, 2012

FHWA - Current due date is August 1, 2012 (This is sent to Caltrans subject to the Caltrans' Disadvantaged Business Enterprise Implementation Agreement for Local Agencies. See **Attachment 5**.)

In accordance with part 26, § 26.45(f), the City of Fresno will submit its overall goal to DOT on August 1 every three years and annually to Caltrans based upon the schedule above. Before establishing the overall goal each year, the City of Fresno will consult with the various minority chambers of commerce, various local trade and general contractor organizations, and women and minority community organizations, to obtain information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and the City of Fresno's efforts to establish a level playing field for the participation of DBEs.

Following this consultation, the City of Fresno will publish a notice of the proposed overall goals, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at the Office of the City Clerk for 30 days following the date of the notice, and informing the public that the City of Fresno and DOT will accept comments on the goals for 45 days from the date of the notice. The notice will be published in the Fresno Bee, The Advocate, Vida en el Valle and the Builder's Exchange. Normally, this notice will be issued by June 1 of each year. The notice must include addresses to which comments may be sent and addresses (including offices and websites) where the proposal may be reviewed.

The City of Fresno's overall goal submission to DOT will include a summary of information and comments received during this public participation process and our responses.

The City of Fresno will begin using the overall goal on October 1 of each year, unless other instructions have been received from DOT. If an individual goal has been established on a project basis, the goal will be used starting with the time of the first solicitation for a DOT-assisted contract for the project.

C.2.1 General Establishment of Goals

Once the overall goals are established and approved by the respective Operating Administration (and/or Caltrans in the case of FHWA-assisted projects), they shall be incorporated into this DBE Program by reference in **Attachment 4**. The maximum feasible portion of overall DBE goals will be met by using race-neutral measures in facilitating DBE participation. Race-neutral measures will include outreach and technical assistance to small businesses. Currently, the City may not use race-conscious measures to meet overall DBE goals on FAA or FTA-assisted projects, but may on FHWA-assisted projects through Caltrans (see **Attachment 5**) for UDBEs. The City will not use set asides or quotas in any way in the administration of the DBE Program or to achieve DBE participation.

C.2.2 Establishment of Goals by FAX for FTA-Assisted Projects

Every three years, FAX must submit to FTA, 60 days before the beginning of the federal fiscal year, goals for both the dollar amount and percentage of participation by DBEs. The Transportation Director is responsible for establishing the yearly DBE participation goals as they relate to operating expenditures for Fresno Area Express. The DBE Program Coordinator shall work with Fresno Area Express to set yearly goals for DBE participation for construction/capital improvement projects. The City will not use quotas in any way in the administration of the DBE program or to achieve DBE participation.

49 CFR Part 26 currently provides for a national aspirational goal for DBE participation of not less than 10% of the total FTA funds awarded.

In establishing DBE goals by FAX, the following factors shall be considered:

Total amount of FTA grant money available for the fiscal year.

Overall projections for contract awards and budgeted expenditures.

The availability of firms owned and controlled by DBEs in each category or area of specialty.

The potential to achieve DBE participation through race-neutral means.

C.2.2.1 FAX Goal Revision

The Transportation Director may determine during a fiscal year that it is necessary or appropriate to revise that year's goals. In such event, the revised goals shall be approved

by FTA. The established goals shall then be amended accordingly. Any revisions shall be coordinated with the DBE Program Coordinator.

C.2.2.2 FAX DBE Accounting

DBE participation credit can only be applied to FTA grant funds. However, it is difficult, if not impossible to trace the Federal dollars in the operating budget. To account for the FTA funds and the expenditure associated with any DBE participation, FTA has allowed grantees to establish a formula for determining the mathematical proportion of FTA funds present. It is the FTA proportion of the pooled funds represented as the dollar value of the percentage of FTA funds present relative to all other funds in the pooled account for each procurement action that is normally entered in the DBE quarterly progress report, opposite the appropriate procurement sub-category on the column entitled "Total FTA Funds Awarded".

When procurement actions are undertaken using funds from posted accounts, the dollar value of the FTA funded portion of the transaction made with DBE firms is also identified and recorded quantitatively based on the previously established formula. A determination is also made at this time if the 60 percent is applicable, and if so, the figures are reduced accordingly.

The basis for this computation is found in Section 105 (f) of the Surface Transportation Assistance Act of 1982, Public Law 97-424 (STAA), Subpart D.

C.2.2.3 FAX Determination of Formula

Each year, prior to the submission of goals to FTA, the Fresno Area Express staff shall determine the mathematical proportion of FTA funds present in the operating account:

$$\frac{\text{FTA funds available}}{\text{total operating appropriations}} = \% \text{ of FTA funds present in operating budget}$$

The Fresno Area Express shall then consult with the DBE Program Coordinator to determine the percentage of FTA funds present for construction/capital improvement projects. Information regarding the determination of the percentage of FTA funds present in operations appropriations will also be reported to the DBE Program Coordinator.

C. 3 TRANSIT VEHICLE MANUFACTURERS GOALS

The City of Fresno will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of part 26, § 26.49. Although alternatively under part 26, § 26.49, the City of Fresno may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the transit vehicle manufacturer complying with this element of the program; this alternative by the City is precluded in **Attachment 5**.

C.4 BREAKOUT OF ESTIMATED RACE-NEUTRAL & RACE-CONSCIOUS PARTICIPATION

The breakout of estimated race-neutral and race-conscious participation can be found in **Attachment 6**. This Attachment to the DBE Program will be updated every year when the respective overall goal calculation is updated for FHWA and Caltrans.

C.5 CONTRACT GOALS

FHWA-assisted projects are funded through Caltrans. City, as a sub-recipient, is subject to Caltrans' Disadvantaged Business Enterprise Implementation Agreement for Local Agencies, set forth in **Attachment 5**, in establishing and submitting goals on such projects.

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

The City of Fresno will establish contract goals only on those FHWA-assisted contracts that have subcontracting possibilities. The City need not establish a contract goal on every such contract, and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of UDBEs to perform the particular type of work.)

The City of Fresno will express the contract goal as a percentage of the total amount of the FHWA-assisted contract.

On FAA and FTA assisted contracts, the method for requiring DBE participation will be by race neutral means, individual contract goals will not be established.

C.6 GOOD FAITH EFFORTS PROCEDURES (FHWA-ASSISTED PROJECTS)

C.6.1 Demonstration of Good Faith Efforts

City is subject to Caltrans' Disadvantaged Business Enterprise Implementation Agreement for Local Agencies, set forth in **Attachment 5**.

When a contract goal has been established for an FHWA-assisted project, the obligation of the bidder/offeror is to make good faith efforts. The bidder/offeror can demonstrate that it has done so either by meeting the contract goal or documenting good faith efforts. Examples of good faith efforts are found under Minimum Documentation of Good Faith

Efforts, below.

The DBE Program Coordinator is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive. The City of Fresno will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

The Purchasing Manager or responsible department shall forward copies of the bid proposals to the DBE Program Coordinator for evaluation of compliance with DBE Program requirements. The DBE Program Coordinator shall review all the information submitted by the bidders. Should the DBE Program Coordinator determine that additional information is needed to assess whether a particular UDBE listed by a bidder/offeror will be performing a commercially useful function in the contract work, whether a particular UDBE listed by a bidder/offeror has been previously certified, or for any other pertinent reason, the DBE Program Coordinator shall require said bidder/offeror to submit such information.

In the event the bidder/offeror(s) does not meet the goal or fails to demonstrate that adequate good faith efforts were made or fails to submit the required documentation, the DBE Program Coordinator shall so advise the Purchasing Manager and the responsible department.

A Bidder/offeror who has been informed by the City of Fresno that it is not responsive because it has not documented sufficient good faith efforts, will be permitted to request administrative reconsideration. Such reconsideration will be by an official who did not play any role in the original determination that the bidder/offeror did not document sufficient good faith efforts. As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the official to discuss the issue or make such argument. The City of Fresno will send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder/offeror did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to DOT.

A bidder/offeror which fails to achieve the specified UDBE goal or alternatively fails to demonstrate adequate good faith efforts to meet the goal shall be deemed nonresponsive and, therefore, ineligible for award of the contract.

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

1. The names and addresses of UDBE firms that will participate in the contract;

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

Additional requirements include the following:

- a. Submission of information required under this section shall be on a form provided by the City.
- b. The UDBE information required under this section is in addition to the subcontractor information required pursuant to the provisions of sections 4100 to 4113, inclusive, of the California Public Contract Code.
- c. All bidders must submit the names and location of the place of business of all proposed UDBEs regardless of the dollar amount of the work they will perform.
- d. All bidders must submit a summation of the total dollar value of the proposed work to be performed by all UDBEs stated as a percentage of the total bid amount.
- e. The three lowest bidders shall submit to the Purchasing Manager, no later than 5:00 p.m. on the third City working day following the date of the bid opening, (unless a later date is authorized by the DBE Program Coordinator) a complete description of work or supplies to be provided by each of the UDBEs and the dollar value of each UDBE transaction. Such information is subject to verification by the DBE Program Coordinator who may require additional information or clarification. Such additional information or clarification can apply only to the UDBEs listed in the bid proposal. Additional UDBEs not listed with the bid will not be considered in awarding the contract.
- f. Bidders, other than the three lowest bidders, need not submit UDBE information unless requested to do so by the DBE Program Coordinator. When such information is requested, the UDBE information must be submitted within five (5) calendar days from the date of request, unless a later time is authorized by the DBE Program Coordinator.
- g. Bidders are cautioned that even though the information submitted indicates they have met the goal, they should document and submit their good faith effort information no later than 5 p.m. on the third working day following the date of bid opening (unless a later date is authorized by the DBE Program Coordinator), to protect their eligibility for award of the contract, in the event the DBE Program Coordinator finds in his/her review that the goal has not been met.

C.6.2 Minimum Documentation of Good Faith Efforts

It shall be noted that, in order to be declared a responsive bidder on an FHWA-assisted

project for which a contract goal has been established, the bidder/offeror must clearly document that it has obtained enough UDBE participation to meet the goal or that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough UDBE participation to do so. This means that prior to submitting the bid proposal, the bidder/offeror must show that it took all necessary and reasonable steps to achieve a UDBE goal or other requirements of 49 CFR Part 26, which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient UDBE participation, even if they were not fully successful. The types of actions which will be considered as part of the bidder/offeror's good faith efforts to obtain UDBE participation include, but are not limited to, the following:

- Attendance at the Pre-Bid meeting, if a meeting is scheduled.
- Advertisement in a pertinent trade association newsletter or minority/women focus newspapers and/or publications, no less than 10 calendar days (or other reasonable period of time, as determined by the City, is sufficient time to allow the DBEs to respond to the solicitation) before bids are due. Acceptable publications include, but are not limited to: The Fresno Bee, the Fresno Business Journal and the Daily Pacific Builders.
- 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 UDBEs.
- Soliciting through all reasonable and available means the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the UDBEs to respond to the solicitation. The bidder must determine with certainty if the UDBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by UDBEs in order to increase the likelihood that the UDBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate UDBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- Negotiating in good faith with interested UDBEs. It is the bidder's responsibility to

make a portion of the work available to UDBE 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 UDBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of UDBEs 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 UDBEs to perform the work.

- A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using UDBEs is not in itself sufficient reason for a bidder's failure to meet the contract UDBE goal, as long as such costs are reasonable. Also the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from UDBEs if the price difference is excessive or unreasonable.
- Not rejecting UDBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
- Making efforts to assist interested UDBEs in obtaining bonding, lines of credit or insurance as required by the recipient or contractor.
- Making efforts to assist interested UDBEs in obtaining necessary equipment, supplies, materials or related assistance or services.
- The three lowest bidders must include, in the UDBE report filed with the Purchasing Manager before 5:00 p.m on the third City working day following the bid opening (unless a later date is authorized by the DBE Program Coordinator), documentation regarding their good faith efforts. Only UDBEs listed on the DBE Certification of Good Faith Effort will be considered in evaluating Good Faith Effort. The documentation must include a detailed statement of efforts made to select portions of the work to be performed by UDBEs and of the contact with UDBEs, including the following minimum information: (a) the names, addresses, and telephone numbers of the individuals directly contacted, and the date and time when the UDBEs were contacted; (b) a description of the information

provided to UDBEs regarding the plans and portions of the work to be performed; (c) a list of all UDBE bids which were received but not used, giving reasons for rejection (d) copies of all advertisements indicating the date of advertisement; (e) fax or email confirmations; (f) description of work that was broken out for subcontractors and suppliers; and (g) evidence that the California Unified Certification Program (CUCP) data base was accessed at least 10 days prior to bid.

C.6.3 Good Faith Efforts When a UDBE is Replaced on a Contract

The City of Fresno will require a contractor to make good faith efforts to replace a UDBE that is terminated or has otherwise failed to complete its work on a contract with another certified UDBE, to the extent needed to meet the contract goal.

The City will require the prime contractor to give notice in writing to the UDBE, with a copy to the City, of its intent to request to terminate and/or substitute a UDBE and the reason for such request. The prime contractor will be required to give the UDBE five (5) calendar days to respond to the contractor's notice and advise the City and the contractor of its reasons, if any, why it objects to the proposed termination and why the City should not approve the contractor's action. If a matter of public necessity (e.g., safety), the City may provide a response period shorter than five (5) calendar days.

The City will require the prime contractor to notify the City immediately of the UDBE's inability or unwillingness to perform and provide reasonable documentation. In this situation, the City will require the prime contractor to obtain the City's prior approval of the substitute UDBE and to provide copies of new or amended subcontracts, and documentation of good faith efforts.

If the contractor fails or refuses to comply in the time specified, the City of Fresno may issue an order stopping all or part of payment/work until satisfactory action has been taken or proceed with other contract remedies including, without limitation, termination of the contract for contractor's breach.

The foregoing applies in instances where the contractor seeks to perform the work itself, except in those extreme circumstances where it becomes necessary to perform a particular contract item (such as traffic control, erosion control, etc.) at a moment's notice to protect the public safety with the approval of the City.

The prime contractor is to exert the necessary good faith effort to replace/substitute UDBEs for those UDBEs unable or unwilling to perform during the life of the contract to the extent needed to meet the contract goal established for the contract or project.

If the contractor fails or refuses to comply in the time specified, the City's contracting office

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

C.6.4 Sample Bid Specifications

The forms found in **Attachment 7** will be used to collect information necessary to determine whether the bidder/offeror has satisfied these requirements. The sample specification, below, is intended for use in both nonconstruction and construction contracts for which a contract goal has been established. Thus, it can be included in invitations for bid for construction, in requests for proposals for architectural/engineering and other professional services, and in other covered solicitation documents. A bid specification is required only when a contract goal is established.

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

The bidder/offeror will be required to submit the following information: (1) the names and addresses of UDBE firms that will participate in the contract; (2) a description of the work that each UDBE firm will perform; (3) the dollar amount of the participation of each UDBE firm participating; (4) Written documentation of the bidder/offeror's commitment to use a UDBE subcontractor whose participation it submits to meet the contract goal; (5) Written confirmation from the UDBE that it is participating in the contract as provided in the commitment made under (4); and (6) if the contract goal is not met, evidence of good faith efforts.

C.6.5 Counting UDBE Participation

The City of Fresno will count UDBE participation toward overall and contract goals as provided in part 26, § 26.55.

The DBEs listed by bidders for participation in the contract work shall be certified by the California Unified Certification Program (CUCP) as eligible UDBEs prior to bidding. Where the certification of a proposed DBE has not been established prior to bidding, credit for UDBE participation will not be allowed.

UDBE subcontractors, suppliers, and manufacturers must perform a commercially useful

function in the work of the contract in order for their contribution toward the total contract work to be included in the UDBE contract participation percentages. A UDBE firm is considered to perform a commercially useful function when it is responsible for execution of a distinct element of the work of the contract and for carrying out its obligations by actually performing, managing and supervising the work involved. A UDBE supplier or manufacturer shall be deemed to perform a commercially useful function in the contract work, provided that actual and contractual responsibility for the provision of the materials and supplies is assumed. A UDBE subcontractor which, in turn, further subcontracts a significantly greater portion of the assigned work than would be expected on the basis of normal industry practices shall be presumed not to be performing a commercially useful function. Such UDBE may present evidence to rebut this presumption to the DBE Program Coordinator; however, this must be done as part of the documentation submitted to the Purchasing Manager before 5:00 p.m. on the third City working day following the bid opening (unless a later date is authorized by the DBE Program Coordinator).

SUBPART D - DBE CERTIFICATION STANDARDS

D.1 CERTIFICATION PROCESS

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

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

DBE Program Coordinator, 2101 G St. Bldg.A, Fresno, CA 93706 559-621-1182

Our certification application forms and documentation requirements are found in **Attachment 8**.

SUBPART E - DBE CERTIFICATION STANDARDS

E.1 UNIFIED CERTIFICATION PROGRAM

On January 8, 2001, the City Council approved a Letter of Agreement/Declaration of Status for the City of Fresno to participate in a statewide DBE Unified Certification Program. The City of Fresno is a member of a Unified Certification Program (UCP) administered by California Unified Certification Program (CUCP). The UCP will meet all of the requirements of this section. The following is a description of the UCP: The California Unified Certification Program (CUCP) provides “one-stop shopping” certification services to small, minority and women businesses seeking to participate in the United States Department of Transportation Disadvantaged Business Enterprise (DBE) Program. Certification services are offered to businesses seeking to obtain either DBE or airport concession disadvantaged business enterprise (ACDBE) status.

When applicants that are not located within a radius feasible for the DBE Program Coordinator or DBE staff to make a personal interview, the DBE Program Coordinator shall coordinate data with the CUCP in that locality or other certifying agencies.

DBE application forms may be obtained from the City of Fresno Purchasing Division.

E.2 PROCEDURES FOR CERTIFICATION DECISIONS

Certification will be done in accordance with parts 23 and 26.

E.2.1 Annual Updates (Re-certifications)

The City of Fresno will review the eligibility of DBEs that the City certified under former part 23, to make sure that they will meet the standards of Subpart E of part 26. This will be completed no later than three years from the most recent certification date of each firm.

For firms that the City has certified or reviewed and found eligible under part 26, the City will again review their eligibility annually. These reviews will include the following components: Personal and business federal income taxes, annual corporate minutes, updated license if applicable, personal net worth statement and a “No Change Affidavit.”

E.2.2 “No Change” Affidavits and Notices of Change

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

The City of Fresno also requires all owners of all DBEs that the City certified to submit, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of part 26, § 26.83(j). The test of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [name of DBE firm] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR part 26. There have been no material changes in the information provided with [name of DBE]’s application for certification, except for any changes about which you have provided written notice to the [Recipient] under part 26, § 26.83(j). [Name of firm] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402) over the firm’s previous three fiscal years do not exceed \$22.41 million.

The City of Fresno requires DBEs to submit with this affidavit documentation of the firm’s size and gross receipts. However, the average gross receipts over the airport concession DBE’s previous three fiscal years may not exceed \$52.47 million.

The City of Fresno will notify all currently certified DBE firms of these obligations by mail 60 days in advance of submission date. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm’s owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

E.2.3 Denials of Initial Requests for Certification

If the City of Fresno denies a firm’s application or decertifies it, it may not reapply until 12 months have passed from the City’s action.

E.2.4 Removal of a DBE’s Eligibility

In the event the City of Fresno proposes to remove a DBE’s certification, the City will follow procedures consistent with part 26, § 26.87. **Attachment 9** to this DBE Program sets forth these procedures in detail. The DBELO will notify a DBE of any determination that there is reasonable cause to believe the firm to be ineligible and afford the firm an opportunity to request an informal hearing within 30 days of the notice. If the DBE requests a hearing, then a hearing will be scheduled within 30 days of the request. To ensure separation of functions in a de-certification, the City has determined that the file will be sent to another CUCP certifying agency for the hearing and re-consideration.

E.2.5 Certification Appeals

Any firm or complainant may appeal the City of Fresno’s decision in a certification matter

to DOT. Such appeals may be sent to:

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

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

SUBPART F – COMPLIANCE AND ENFORCEMENT

F.1 INFORMATION, CONFIDENTIALITY, COOPERATION

The City of Fresno will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law, including the California Public Records Act (California Government Code § 6250, et.seq.).

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

F.2 MONITORING PAYMENTS TO DBES

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

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

Also see **Attachment 3**.

See **Attachment 10** for 49 CFR Parts 23 (including Appendix A) and 26 (including Appendices A-F).

Attachment 1

Bidders List Information

2007 - 2011 DOT ONLY BIDDERS LIST CONTRACTOR SUMMARY 9-7-07 to 6-30-11

CONTRACTOR	NAICS CATEGORY	DBE CERT #	ETHNICITY/ GENDER	ADDRESS	PHONE	FAX
A-1 Ornamental Iron	238990	32142	HISP/M			
A-C Electric Company	238210	N/A	N/A	PO Box 6060 Fresno 93703	233-2208	233-6849
Agee Construction Corp	237310	N/A	N/A	PO Box 629 Clovis 93613		
Alert-O-Lite	238990	16345	CAUC/F	2379 S. "G" Street Fresno 93721	486-4570	
All West	237310	N/A	N/A	Fresno		
Allante Fence	238990	28032	HISP/M			
American Paving	237310	N/A	N/A	PO Box 4348 Fresno 93744	268-9886	268-2908
Anthony's Laser Leveling	237310	31152	HISP/F			
APCO/Asphalt Paving Co.	237310	N/A	N/A	PO Box 790 Goshen 93227		
Arcade Construction/Alcal	238990	N/A	N/A	2647 N. Weber Fresno		
Austin Enterprises	238990	13602	HISP/F	1536 Calloway Dr. Bakersfield 93312	661-589-1001	661-589-9509
B & B Construction Services	237310	N/A	N/A	635 Barstow, #22 Clovis 93612	323-0216	323-0427
BDS Construction	238110	26805	NATAM/M			
Bill's Striping	238990	N/A	N/A	711 W. Yosemite Madera 93637	673-2678	
BMY Construction	236220	N/A	N/A	5493 E. Olive Fresno		
Cal Valley General Engineering	237310	N/A	N/A	6271 W. Bullard Fresno 93722	274-0300	274-0311
California Construction Survey	541370	N/A	N/A	2801 Airport Dr. #202 Madera 93637		
Cruco Construction Group	237310	N/A	N/A	2443 Foundry Park Fresno 93706	498-3639	498-3527
Dave Christian Construction	237310	N/A	N/A	2233 S. Minnewawa Fresno 93727	255-1222	255-1292
Dawson-Mauldin Construction Inc.	237310	34661	CAUC/F	1025 E. Nebraska Selma 93662	714-378-1533	714-378-1531
DL Constructin	237310	N/A	N/A	Fresno	790-0732	274-1579
Don Berry Construction	237310	N/A	N/A	PO Box 620 Selma 93662		
ERG Transit Systems, Inc.	485113	N/A	N/A	1800 Sutter St. Ste. 900, Concord 94520		
Espinosa Survey	541370	CLOSED	CLOSED	5464 S. Elm Ave Fresno 93706	442-0883	442-0884
Floyd Johnston Construction, Inc.	237310	N/A	N/A	2301 Herndon Clovis 93611	299-7373	323-9446
Fresno Concrete	238110	203	HISP/M	5450 S. Villa Fresno 93725		
Garcia Paving	237310	375	HISP/M	2951 S. Elm Fresno 93706	266-3258	266-8337
George Dakovich & Son, Inc.	237110	N/A	N/A	6135 N. Golden State Blvd. Fresno 93722	277-8092	277-8096
Granite Construction Co.	237310	N/A	N/A	PO Box 50085 Watsonville 95076	441-5700	831-768-4021
Hobbs Construction	237310	N/A	N/A	8850 N. Meridan Fresno 93720		
Jim Crawford Construction, Inc.	237310	N/A	N/A	1189 Hoblitt Clovis 93612	299-0306	299-1958
Krazan and Associates	541330	N/A	N/A	215 W. Dakota Clovis 93612	348-2200	
Kroeker, Inc.	237990	N/A	N/A	4627 S. Chestnut Fresno 93725		

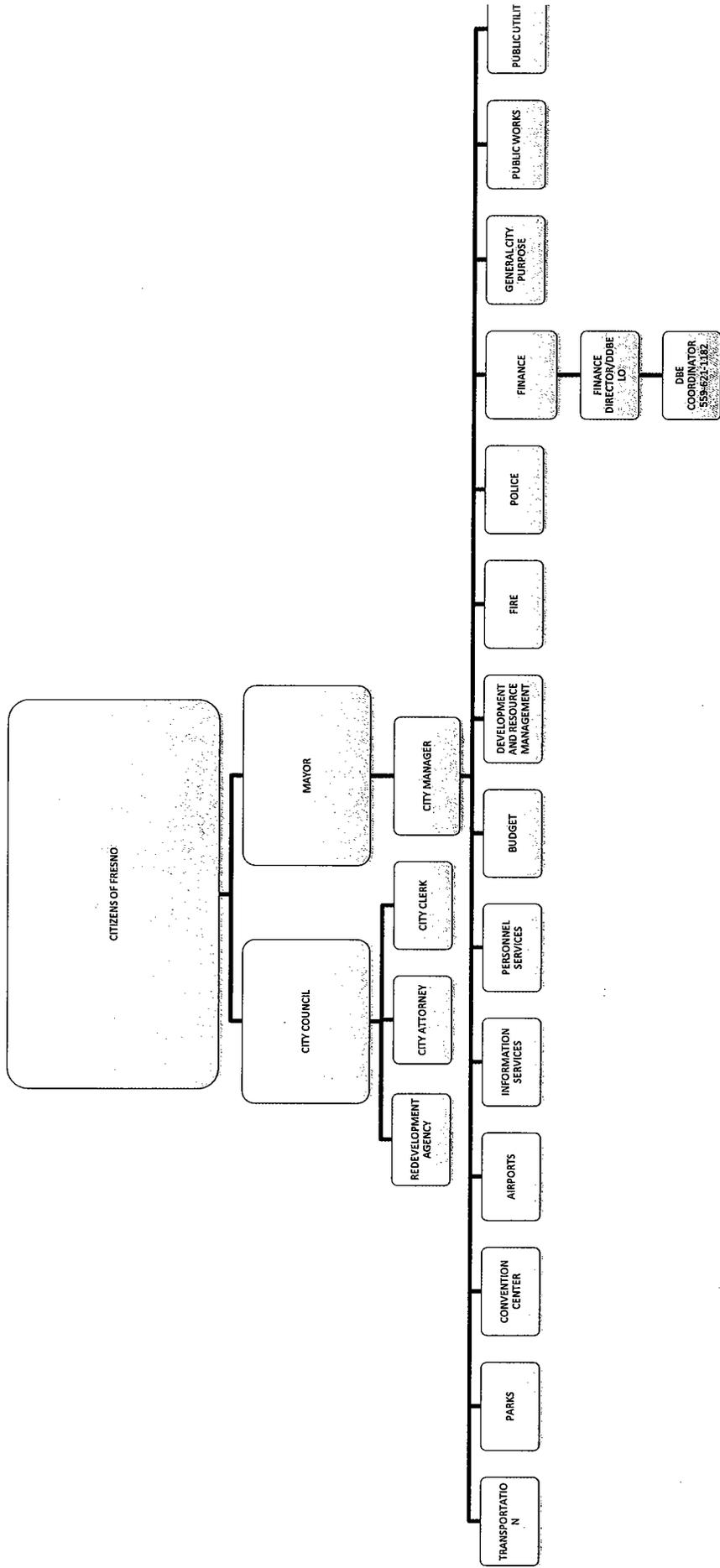
2007 - 2011 DOT ONLY BIDDERS LIST CONTRACTOR SUMMARY 9-7-07 to 6-30-11

CONTRACTOR	NAICS CATEGORY	DBE CERT #	ETHNICITY/ GENDER	ADDRESS	PHONE	FAX
				As of 5/1/11 233 Bidders, 26 DBE, 17 UDBE		
				DBE percentage 26/233 = 11.16%		11.16%
				UDBE percentage 17/233 = 7.3%		7.30%

Attachment 2

Organizational Chart

CITY ORGANIZATIONAL CHART FY 2012



Attachment 3

Monitoring and Enforcement Mechanisms

The City of Fresno has available several remedies to enforce the DBE requirements contained in its contracts, including, but not limited to, the following:

1. Breach of contract action, pursuant to the terms of the contract;
2. Retainage of additional funds until full contract compliance has been met.

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

1. Suspension or debarment proceedings pursuant to 49 CFR Part 26
2. Enforcement action pursuant to 49 CFR Part 31
3. Prosecution pursuant to 18 USC 1001.

49 CFR Part 26, § 26.29 requires DOT-assisted contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

The City of Fresno shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the city. (49 CFR Part 26, § 26.29(b)(3), referenced herein as "Method 3")

The following procedures will be used to comply with Method 3;

- At pre-bid meetings - The DBE Coordinator will point out the requirements for prompt payment under the federal requirements. The successful bidder will provide a list of all subcontractors to be used under the contract and a full description of subcontracted work.
- At the pre-construction meeting - The construction or project manager will require the above list to be provided as a submittal along with a project schedule that identifies any of the subcontractors which may have their work completed/accepted prior to the completion of the entire project.
- During construction - When a progress payment is prepared, the construction or project manager will review the schedule and the actual completed work to date and determine if there is any subcontractor which has completed 100% of their contract.

-
- If no subcontractor has completed 100% of their contract, the review which has taken place is documented for that payment.
 - If there is a subcontractor which has completed 100% of their contract, staff will contact the prime contractor and verify that the subcontractor has completed 100% of his work.
 - If the prime contractor agrees that the subcontractor's work is complete, a letter of acceptance for that subcontractor's portion of work will be sent to the prime contractor and subcontractor, and the payment will be processed releasing retention for that portion of the work. If the prime contractor disagrees, the remaining work is documented and no release is included for that payment.
 - After a release of retention for incremental acceptance, staff will contact the subcontractor to verify payment to the subcontractor within 30 days after City payment to the prime contractor. Documentation of verification of payment will be filed. If prompt payment has not been made, the City will notify the prime contractor and will proceed with penalties, sanctions, and other remedies specified in the contract.

Attachment 4

Overall Goal Calculation

Below is a sample form for preparing the overall goal for the respective Operating Administration. The current (as amended, or superseded for future time periods) overall goal and calculations are attached and incorporated by reference in the following attachments:

- Attachment 4-1 - Overall Goal Calculation for FAA-assisted Projects
- Attachment 4-2 - Overall Goal Calculation for FTA-assisted Projects
- Attachment 4-3 - Overall Goal Calculation for FHWA-assisted Projects
(AADPL to the California Transportation Department)

Amount of Goal

The City of Fresno's overall goal for the following time period 20__ - 20__ is the following: __% of the Federal financial assistance we will expend in DOT-assisted contracts, exclusive of FTA funds to be used for the purchase of transit vehicles.

METHODOLOGY USED TO CALCULATE OVERALL GOAL

The overall goal is based on demonstrable evidence of the availability of ready, willing and able DBEs (hereinafter, "UDBEs" for purposes of FHWA-assisted contracts) relative to all businesses ready, willing and able to participate on DOT-assisted contracts by the use of the following method:

Step 1: 26.45(c)

Determine the base figure for the relative availability of DBEs.

The base figure for the relative availability of DBE's was calculated as follows:

$$\text{Base figure} = \frac{\text{Ready, willing, and able DBEs}}{\text{All firms ready, willing and able}}$$

The data source or demonstrable evidence used to derive the numerator was:
The CUCP data base for Fresno, Kern, Kings, Madera and Tulare counties.

The data source or demonstrable evidence used to derive the denominator was:
The Census Bureau's County Business Pattern (CBP) data base for Fresno, Kern, Kings, Madera and Tulare counties.

After calculating a base figure, all evidence available was examined to determine what adjustment, if any, was needed to the base figure in order to arrive at an overall goal. The following data was examined:

- The City's efforts to contract with DBEs.
- Any available and relevant disparity studies
- Information from local organizations and agencies that promote DBE outreach programs.
- Information from DBE and Small Business Outreach Program activities, meetings, workshops.
- Information from small businesses invited to meet with the DBE Program, Purchasing,
- Public Works, Fresno Area Express, and Airports representatives/staff.
- Any other evidence pursuant to 49 CFR Part 26.

For UDBE's, the gender and ethnicity was determined from the database and deducted from the total number of DBE's ready, willing, and able to work in the market area of Fresno, Kern, Kings, Madera and Tulare counties

When we divided the numerator by the denominator we arrived at the base figure for our overall goal and that number was: See Attachments 4-1, 4-2 and 4-3.

Step 2: 26.45(d)

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

In order to reflect as accurately as possible the DBE participation we would expect in the absence of discrimination we have adjusted our base figure by ___% (see Attachments 4-1, 4-2 and 4-3.)

The data used to determine the adjustment to the base figure for FAA -assisted contracts was: The actual utilization.

The reason we chose to adjust our figure using this data was because: The average of the prior 4-years' actual DBE utilization was less than the calculated goal.

The data used to determine the adjustment to the base figure for FTA-assisted contracts was: Availability of the DBEs' capacity to perform services or provide materials, supplies and equipment.

The reason we chose to adjust our figure using this data was because: Fresno Area Express is a department of the City of Fresno and consequently must receive many of its supplies through vendors selected by the Purchasing Division utilizing the competitive bid process (low bid regardless of DBE status).

The data used to determine the adjustment to the base figure for FHWA-assisted contracts was: The Bidders List was utilized to determine the number of UDBEs that have bid or quoted on DOT-assisted prime or subcontracts in the previous year and the number of all businesses that have quoted on prime or subcontracts in the same time period. The number of UDBEs were divided by the number of all businesses to derive a base figure of _____ (see Attachment 4-3) for the relative availability of DBEs in the market.

The reason we chose to adjust our figure using this data was because: The Bidders List reflects that the number of UDBE's that actually bid on City of Fresno contracts is less than what is indicated who are ready, willing, and able.

From this data, we have adjusted our base figure to: See Attachments 4-1, 4-2 and 4-3.

Public Participation

The City of Fresno published our goal information in these publications:
See Attachments 4-1, 4-2 and 4-3.

The City of Fresno received comments from these individuals or organizations:
See Attachments 4-1, 4-2 and 4-3.

Summaries of these comments are as follows:
See Attachments 4-1, 4-2 and 4-3.

The City's responses to these comments are:
See Attachments 4-1, 4-2 and 4-3.

Attachment 4-1

Overall Goal Calculation for FAA-assisted Projects

EXPLANATION OF METHODOLOGY FOR OVERALL GOAL CALCULATION FOR FY 2012-2014
Section 26.45: Overall Goal Calculation

Amount of Goal

The City of Fresno’s annual DBE goal for FAA-Assisted Projects for FY 2012-2014 is 4% of the Federal Financial assistance to be expended on DOT/FAA-assisted contracts.

Methodology used to Calculate Overall Goal

Following is a summary of the Methodology used to calculate and establish our annual Overall DBE Goal for FAA-assisted projects for FY 2012-2014: The City utilized the prescribed 26.45 two-step process of **Step 1: 26.45(c)** determining a base figure for the relative availability of DBEs for the Fresno area, and **Step 2: 26.45(d)** after calculating a base figure of the relative availability of DBEs, examining evidence to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

Step 1: 26.45(c) Actual relative availability of DBEs. - Base Figure

Since the substantial majority of the Airport contractors and subs come from the greater Fresno area (i.e. Fresno, Madera, Kings, Tulare, Kern and Merced Counties) and the substantial majority of the Airport’s contracting dollars are spent in the Fresno area, we determined that Fresno, Madera, Kings, Tulare, Kern, and Merced Counties are the primary market areas. Table A.3

The data source or demonstrable evidence used to derive the numerator was US Census Data and DBE directories.

The City used the US Census data for the majority of the trades (work categories) listed in the attached Table A.1, **“Calculation of Base Figure for Anticipated Project for FY 2012-2014”**. We used DBE Directories to determine the number of DBEs in the market area (numerator) relative to the number of all businesses in the market that perform work in the work categories (denominator). Although weighting is not required, we continued our calculations to include weighting and used the Base Figure after weighting. Table A.2 lists the anticipated projects and amount of funding anticipated for each project. These figures were used in the weighting on Table A.1, column A.

We determined the base figure for the relative availability of DBEs - DBEs in the market relative to the number of all businesses available in the market that perform work in the same work category required for participation in the projects. Table A.1.

$$\text{Base Figure Before Weighting} = \frac{\text{Number of Available DBEs in Work Categories}}{\text{Total of All firms in Work Categories}} = \frac{19}{703} = 2.07\%$$

The total of Column F, **2.07%** is the **Base Figure Before Weighting**. The total of available DBEs in the work categories, Column C, was divided by the total number all firms in the work categories, Column D.

Weighting: See Table A.1:

We divided the estimated dollars to be expended in each project by the estimate of total dollars of federal financial assistance we will expend in FAA DOT-assisted projects to arrive at a percentage - Column B. We then multiplied DBE availability (Column F) by the percent of total estimated procurement dollars in work category (Column B) resulting in the Base Figure after Weighting (Column G) $B \times F = G$ Total of Column G = Base Figure After Weighting

Base Figure after Weighting = DBE Availability % times Percent of Total estimated Procurement dollars in work category. $B \times F =$ **Base Figure after Weighting of (0.408) 4.08% (Total of Column G)**

The **Base Figure Before Weighting**, the percentage of the total DBEs to the total number of firms available in the work categories is **2.07%**. The **Base Figure After Weighting**, the percentage of DBEs weighted by the percentage of work in each category, is **4.08%**

Step 2: 26.45(d) Adjustment to Step 1 goal, to make it more precise.

After calculating a base figure of the relative availability of DBEs, evidence was examined to determine what adjustment was needed to the base figure in order to arrive at the overall goal.

Past Participation of DBEs: 2005 -2.5%, 2006 10.58%, 2007 7.8% and 2008 3.3%, 2009 0.2%, 2010 2.1%, 2011 0%. The average of past DBE participation in FAA-assisted projects is 3.78%.

Based on an examination of types of projects, history and past participation leads to an **overall goal of 4% for FAA-Assisted Projects for FY 2012 - 2014.**

Race Neutral DBE Program

All projects for FY 2012 - 2014 will be race neutral. The City will use only race neutral measures to facilitate DBE participation. These measures include assistance with bid documents, providing plan holders lists, direct notice of upcoming projects in which DBEs can participate as prime or subcontractors, follow up phone calls to DBEs and reliance on prime contractors utilization of DBEs based on past history. The City of Fresno also does quarterly workshops on “How to Do Business with the City of Fresno” and “The DBE Program and How it Works”. The City also presents workshops at SCORE, the Small Business Development Center, the Small Business Development Day workshops held by the City, attends various ethnic based Chambers of Commerce meetings, and is a DBE certifying agency.

Projects and procurement for achieving DBE participation through race-neutral means have been selected on the basis of past experience and will include certain smaller FAA- assisted contracts.

The City of Fresno has posted the annual goal for the FAA – assisted contracts on Twitter, Facebook and in the Fresno Bee.

CALCULATION OF BASE FIGURE FOR ANTICIPATED PROJECTS FY 2012-2014 FAA FUNDED

Table A.1

Work Category	Total \$s In Category A	Percent of total \$s (A/Total) B	Number of DBEs in Market Area From CUCP Data Base C	Number of Non-DBEs in Market Area (E minus D) D	Total Contractors in Market Area From Census Data E	Before Weighting % DBEs (C/E) F	Weighted Base Figure (B * F) G
Asphalt Concrete NAICS 237310	\$12,235,700	0.5243	11	102	165	0.0667	0.034955599
Storm Drain NAICS 237110	\$800,000	0.0343	3	96	99	0.0303	0.001038856
Carpentry - All other trades 238130	\$9,699,999	0.4157	1	92	93	0.0108	0.004469592
Electrical NAICS 238210	\$600,000	0.0257	4	342	346	0.0116	0.000297245
TOTALS	\$23,335,699	1.0000	19	632	703	2.70%	4.08%

2012-2014 FY Airports Program - Anticipated FAA funded projects

Table A.2

PROJECTS	CH-Northside infrastructure, storm drain	FY1 Taxiway C12, C12 Apron	CH-Rehab taxilanes	Noise Mitigation	Total in Work Category
----------	--	----------------------------	--------------------	------------------	------------------------

Work Categories					
Asphalt Concrete NAICS 237310	\$150,000	\$11,610,700	\$475,000		\$12,235,700
Storm Drain NAICS 237110	\$800,000				\$800,000
Carpentry - All other trades 238130				\$9,699,999	\$9,699,999
Electrical NAICS 238210	\$50,000	\$250,000		\$300,000	\$600,000
TOTALS	\$1,000,000	\$11,860,700	\$475,000	\$9,999,999	\$23,335,699

CITY OF FRESNO 2012 -2014 AADPL METHODOLOGY

NAICS CODE	237310- HEAVY AND CIVIL ENGINEERING CONSTRUCTION TOTAL ESTABLISHMENTS FROM CENSUS DATA	238130 - CARPENTRY SPECIALTY TRADE CONTRACTORS TOTAL ESTABLISHMENTS FROM CENSUS DATA	237110 - WATER, SEWER, STORM DRAIN CONSTRUCTION TOTAL ESTABLISHMENTS FROM CENSUS DATA	238210 - ELECTRICAL TOTAL ESTABLISHMENTS FROM CENSUS DATA	TOTAL ESTABLISHMENTS FROM CENSUS DATA
MADERA	33	36	40	125	234
FRESNO	73	36	24	121	254
KINGS	6	3	5	15	29
TULARE	12	11	20	25	68
KERN	41	7	10	60	118
TOTALS	165	93	99	346	703

TOTAL DBE WILLING TO WORK IN MARKET AREA FROM CUCP DATA BASE 780

TOTAL DBE LOCATED IN MARKET AREA FROM CUCP DATA BASE 19

TOTAL ESTABLISHMENTS LOCATED IN MARKET AREA FROM CENSUS DATA 703

Table A.3

January 27, 2010

Copy of 2005 Fresno Bee's Publication is included-for your information -- Thanks)

TO: THE FRESNO BEE
ATTENTION JESSE - LEGAL. 441-6115, Fax: 495-6825

FROM: Beth McDonell. City of Fresno, DBE Program, 621-1182 Fax 488-1069

To be published: Wednesday, February 3, 2010.

Please provide Proof, Price Quote
After publication, please provide "Proof of Publication"

Bill to: City of Fresno - DBE Program, 2101 G Street, Bldg A, Fresno, CA 93726

NOTICE ANNOUNCING CITY OF FRESNO DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM GOALS FOR 2009-2010 IN U.S. DEPARTMENT OF TRANSPORTATION (DOT)
ASSISTED CONTRACTS

The City of Fresno is announcing overall goals for Disadvantaged Business Enterprise (DBE) participation for projects financed in part or in whole by the U.S. Department of Transportation (DOT). The goal for the Federal Highway Administration (FHWA) is 11%, Federal Aviation Administration (FAA) is 7%, and Federal Transit Administration (FTA) is 4% for 2009-2010 Federal Fiscal Year.

The rationale for the proposed goals is available for inspection during normal business hours at the City of Fresno General Services Department, Purchasing Division, 2101 "G" Street, for 30 days following the date of this notice. The City and U.S. Department of Transportation will accept comments on the goals for 45 days from the date of this notice.

Comments may be sent to:

City of Fresno
Purchasing Division
Disadvantaged Business Enterprise (DBE) Program
2101 "G" Street Building A
Fresno CA 93706

The United States Department of Transportation
Western Pacific Region WPC
15000 Aviation Blvd Room 2008
Lawndale CA 90261

Comments are for Informational Purposes Only
Date of publication: February 3, 2010

Attachment 4-2

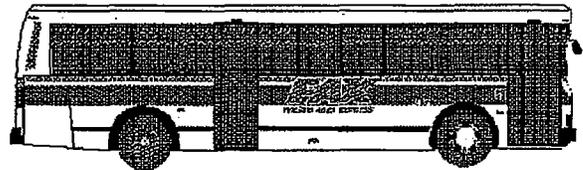
Overall Goal Calculation for FTA-assisted Projects



*Disadvantaged Business Enterprise (DBE)
Participation and Goals*

Fiscal Year 2010

Prepared For:
U.S. Department of Transportation
Federal Transit Administration



NARRATIVE

FUNDING:

Funding Base.....Exhibit A1

FTA Contracting Opportunities.....Exhibit A2

DBE Eligible Funds in Operating Budget (Total Dept. Less Planning).....Exhibit A3.a

DBE Eligible Funds in Planning.....Exhibit A3.b

FY 2009 and FY 2010 FTA Funded DBE Purchasing Opportunities.....Exhibit A4

FY 2009 and FY 2010 Operating Expenses Eligible for FTA Reimbursement.....Exhibit A5

Capital Project Opportunities.....Exhibit A6

FY 2010 Capital Improvement Program Project Description.....Exhibit A7

RESULTS

FY 2009 Past Results of DBE Participation.....Exhibit B1

FY 2010 Anticipated Level Calculation.....Exhibit B2

METHODOLOGY

Methodology for Establishing Goals.....Exhibit C1

QUARTERLY PROGRESS REPORTS



NARRATIVE

The budget appropriations for Fresno Area Express (FAX) for FY 2010 are \$74,159,725, of which, \$41,916,400 have a potential for FTA reimbursement, of that \$9,595,600 are projected to be non-contracting opportunities, leaving \$22,647,700 with a potential for DBE awards. Funds expended for FY 2010 would be for regular operating expenses, planning, passenger amenities, construction and equipment. As FAX has no separate DBE program, all projects and contracts will be factored into the City report and included in the overall projections and goals.

Section: A

Funding

Prepared For:
U.S. Department of Transportation
Federal Transit Administration

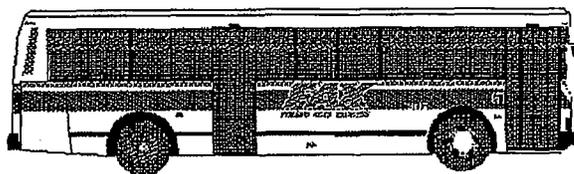


EXHIBIT A1

FRESNO AREA EXPRESS
FTA FUNDING BASE
PROJECTED AWARDS FOR FISCAL YEAR 2010
 July 1, 2009 Through June 30, 2010

Name of Applicant/Recipient: City of Fresno/Fresno Area Express
 Address: 2223 "G" Street
 City/State/Zip: Fresno, CA 93706

Contract/ Procurement Opportunities Category	Total FTA Capital Funds	Total FTA Operating Funds *	Total FTA Planning Funds	Total FTA Other Funds	FTA Funds With Contracting Opportunities
Non-Contracting Opportunities	8,617,600	5,898,280	978,000	0	15,493,880
Construction	7,416,200	0	0	0	7,416,200
Professional	3,127,900	901,100	95,400	0	4,124,400
Materials/Supplies and Equipment	8,761,000	673,900	0	0	9,434,900
Other	0	98,400	0	0	98,400
TOTAL OPPORTUNITIES	27,922,700	7,571,680	1,073,400	0	36,567,780

Total Capital Funds From All sources (FTA & Local): 16,994,080 FTA Percentage = 80.0%,
 ARRA 100% FTA funded

Total Operating Funds From All Sources: 267,744 FTA Percentage = 16.0%

Total Planning Funds From All Sources: 76,320 FTA Percentage = 80.0%

Total Other Funds From All Sources: 0 FTA Percentage = 80.0%

*Note: With the exception of planning costs reimbursed for ongoing operating expenses, the term "Operating Funds" includes FTA Capital Funds reimbursements for all operating expenses such as: vehicle overhaul (maintenance), contract services, capital leases, etc.

Name of Preparer: Joe Vargas, Management Analyst III
 Telephone Number: (559) 621-1445
 FAX Number: (559) 488-1065

Fiscal 2010 DBE Eligible Operating Expense Budget - Total Department: Less Planning

Line Item Number	Line Item Description		Non - Contracting Opportunities	Constuction	Professional	Materials Supplies and Equipment	Other
51101	Permanent Salaries	18,513,500					
51102	Permanent Fringe	483,800					
51103	Employee Leave Payoff	571,300					
51104	Perm Fring- Health and Welfare	2,736,300					
51105	Perm Fring- Life and Disab. Ins	28,900					
51301	Overtime	1,438,300					
51401	Premium Pay	268,325					
51404	Employee Awards	20,000				20,000	
52302	General Service Pension Obligation	725,500					
52601	Worker's Compensation	1,359,400					
52901	Recurring Vehicle Allowance	16,700					
53302	Professional Services/Consulting - Outside	15,800			15,800		
53303	Public Relations and Information	500					
53304	Professional Services/Non-Consulting-Outside	16,000					
53401	Hazardous Waste Management	83,300			83,300		
53402	Specialized Services/Technical	5,436,300			5,436,300		
54101	Utilities	423,600					
54241	Landscaping and Grounds Maint.	25,000					25,000
54301	Outside Repair, Maint. & Service - Bldg.	45,000					45,000
54303	Service Contracts - Office Equipment	309,700					
54304	Outside Repair and Maint./Vehicles	334,300			193,900	140,400	
54305	Outside Repair and Maint./Equip.	94,000			56,400	37,600	
54411	Space Rentals	124,200					
54421	Equip. Rentals/Except Office Equip.(Tire Lease)	348,600				348,600	
54501	Buildings and Improvements	230,800					230,800
55501	Printing and Binding - Outside Vendors	79,200			79,200		
55801	Training	32,500					
55803	Travel & Conference	3,500					
55805	Mileage Reimbursement - Non Recurring	300					
56101	Clothing & Personal Supplies	69,200				69,200	
56102	Office Equipment Under \$1000	1,500				1,500	
56105	Small Tools For Field Operations	56,200				56,200	
56106	Postage	3,100					
56107	Stationery and Office Supplies	54,900				54,900	
56108	Photographic Supplies and Processing	2,200				2,200	
56109	Office Equipment Rentals	0				0	
56110	Computer Software	3,100					
56112	Cleaning and Janitorial Supplies	53,500				53,500	
56115	Materials and Parts/Vehicles	246,500				246,500	
56116	Materials and Parts/Equipment	31,600				31,600	
56121	Inventory	1,451,200				1,451,200	
56240	Lubricating Oils and Fuels	3,971,000				3,971,000	
58005	Miscellaneous Expenditures	12,600				12,600	
58010	Taxes and Bond Premiums	41,900					
58016	Membership and Dues	69,100					
58017	Subscriptions & Publications	8,900					
58020	In - Lieu Payments	321,900					
58200	Council Motions	100					
59101	Variable ID Reimbursement to General Fund	413,200					
59102	City Attorney - Variable Charge	42,600					
59103	Variable Charge - BMSD	72,500					
59105	Purchasing - Variable Charge	181,400					
59106	Variable Charge - HR Operations	183,000					
59107	Training Unit Charges - HR	44,100					
59108	Variable Charge - HR Labor Relations	54,400					
59109	Variable Charges For Finance	193,200					
59114	Internal Audit Variable Charges	22,300					
59201	Fixed Interdept. Reimb. to General Fund	254,600					
59301	Municipal Service Center	32,500					
59302	Information Systems Service Charge	227,900					
59303	Information Systems Equipment Charge	219,900					
59304	Property Self - Insurance Charges	65,400					
59305	Liability Self - Insurance Charges	634,800					
59306	Charges for Messenger/Copier Service	52,300					
59307	Charges for Telephone Services	99,700					
59309	Facilities Management Charges	335,100					
59312	Fleet Services Charge	1,297,600					
59315	Employee/Visitor Parking Permits	900					
59317	Fleet Special Projects Non-Auto	5,300					
59320	Call Center Charges	3,200					
59321	Microsoft Migration	11,200					
	DEPARTMENT TOTALS	44,610,225	0	0	5,864,900	6,497,000	300,800

Revised: 07/24/08
EXHIBIT A2

FY10 TOTAL CONTRACTING OPPORTUNITIES
(Listed at 100% Cost)

Project Description	Construction	Materials, Supplies, And Equip.	Professional Services	Non-Contracting Opportunities	Other	Total FTA Capital & Planning
Buses				5,800,000		5,800,000
Passenger Amenities		510,000	182,600	66,900		759,500
Non-Revenue Vehicles				288,000		288,000
Intermodal Facility	2,324,700	146,900	146,900			2,618,500
Facility Improvements	3,107,200	196,400	196,400			3,500,000
On-Bus Video Equipment		982,600				982,600
CNG Fueling Station	184,300	17,000	17,000			218,300
Lift Station/Pump		116,000				116,000
Facility Video Equipment		121,300				121,300
Bus Stop Security		640,300				640,300
Bus Wash		6,000				6,000
Handheld Radios		20,000				20,000
Trip Planning Project		110,000	440,000			550,000
Bus Rapid Transit	250,000	1,000,000	750,000			2,000,000
Travel Training			40,000			40,000
Resurface Bus Yard		44,500	5,000			49,500
ARRA Buses*				1,800,000		1,800,000
ARRA Regional Farebox System*		1,500,000	500,000	300,000		2,300,000
ARRA Automated Passenger Counters*		700,000	100,000	200,000		1,000,000
ARRA CNG Compressor*	50,000	150,000		50,000		250,000
ARRA Non-Revenue*				112,700		112,700
ARRA Passenger Amenities	1,500,000	2,500,000	750,000			4,750,000
SUBTOTAL - CAPITAL PROJECTS	7,416,200	8,761,000	3,223,300	9,595,600	0	28,996,100
Planning Projects	0		95,400	978,000		1,073,400
SUBTOTAL - PLANNING PROJECTS	0	0	95,400	978,000	0	1,073,400
TOTAL - CONTRACTING OPPORTUNITIES AT 100%	7,416,200	8,761,000	3,223,300	9,595,600	0	28,996,100

*American Recovery and Reinvestment Act projects require no local match

Fiscal 2010 DBE Eligible Operating Expense Budget - Planning Department

Line Item Number	Line Item Description		Non-Contracting Opportunities	Construction	Professional	Materials Supplies and Equipment	Other
51101	Permanent Salaries	190,700					
51102	Permanent Fringe	3,600					
51103	Employee Leave Payoff	5,100					
51104	Perm Fring- Health and Welfare	24,500					
51105	Perm fring- Life and Disability Ins	1,200					
51301	Overtime	0					
51401	Premium Pay	0					
51404	Employee Awards	0					
52302	General Service Pension Obligation	5,200					
52601	Worker's Compensation	0					
52901	Recurring Vehicle Allowance	0					
53302	Professional Services/Consulting - Outside	0					
53303	Public Relations and Information	65,000					
53304	Professional Services/Consulting - Outside	0					
53401	Hazardous Waste Management	0					
53402	Specialized Services/Technical	118,500			118,500		
54101	Utilities	0					
54241	Landscaping and Grounds Maint.	0					
54301	Outside Repair, Maint. & Service - Bldg.	0					
54303	Service Contracts - Office Equipment	0					
54304	Outside Repair and Maint./Vehicles	0					
54305	Outside Repair and Maint./Equip.	0					
54411	Space Rentals	0					
54421	Equip. Rentals/Except Office Equip.(Tire Lease)	0					
54501	Buildings and Improvements	0					
55501	Printing and Binding - Outside Vendors	139,100			139,100		
55801	Training	0					
55805	Mileage Reimbursement - Non Recurring	0					
56101	Clothing & Personal Supplies	0					
56102	Office Equipment Under \$300	0					
56105	Small Tools For Field Operations	500					
56106	Postage	0					
56107	Stationery and Office Supplies	0					
56108	Photographic Supplies and Processing	0					
56109	Office Equipment Rentals	0					
56110	Computer Software	0					
56112	Cleaning and Janitorial Supplies	0					
56115	Materials and Parts/Vehicles	0					
56116	Materials and Parts/Equipment	0					
56121	Inventory	0					
56240	Lubricating Oils and Fuels	0					
58005	Miscellaneous Expenditures	0					
58010	Taxes and Bond Premiums	0					
58016	Membersip and Dues	0					
58017	Subscriptions & Publications	0					
58020	In - Lieu Payments	0					
59101	Variable ID Reimbursement to General Fund	0					
59102	City Attorney - Variable Charge	0					
59103	Variable Charge - BMSD	0					
59105	Purchasing - Variable Charge	0					
59106	Variable Charge - HR Operations	0					
59107	Training Unit Charges - HR	0					
59108	Variable Charge - HR Labor Relations	0					
59109	Variable Charges For Finance	0					
59114	Internal Audit Variable Charges	0					
59201	Fixed Interdept. Reimb. to General Fund	0					
59302	Information Systems Service Charge	0					
59303	Information Systems Equipment Charge	0					
59304	Property Self - Insurance Charges	0					
59305	Liability Self - Insurance Charges	0					
59306	Charges for Messenger/Copier Service	0					
59307	Charges for Telephone Services	0					
59309	Facilities Management Charges	0					
59312	Fleet Services Charge	0					
59315	Employee/Visitor Parking Permits	0					
59317	Fleet Special Projects Non-Auto	0					
59320	Call Center Charges	0					
59321	Microsoft Migration	0					
DEPARTMENT TOTALS		553,400	0	0	257,600	0	0

EXHIBIT A4

**FTA FUNDED FY '10 DBE PURCHASING
OPPORTUNITIES AT FRESNO AREA EXPRESS**

<u>Percentage of FTA Funds in Transit Operating Budget:</u>	<u>Calculation</u>					
FTA funds available in FY '09 divided by the total FY '10	<table border="0"> <tr> <td align="right">\$8,076,960</td> <td align="right">17.9%</td> </tr> <tr> <td align="right"><u>\$45,163,625</u></td> <td></td> </tr> </table>	\$8,076,960	17.9%	<u>\$45,163,625</u>		
\$8,076,960	17.9%					
<u>\$45,163,625</u>						

FTA Funded Operating Budget DBE Purchasing Opportunities:

	<u>Amount</u>	<u>Percentage</u>	
Construction	\$7,416,200.00	17.88%	\$1,326,296
Materials, Supplies, And Equipment	\$6,497,000.00	17.88%	\$1,161,909
Professional Services	\$6,122,500.00	17.88%	\$1,094,934
Other	\$300,800.00	17.88%	\$53,794
TOTAL	\$20,336,500.00		\$3,636,933

***Fiscal 2010 Operating Expenses-
Eligible For FTA Reimbursement***

Expense Category	Budgeted Amount	Eligible Percentage	Reimbursement Amount
Planning Functions:			
Reimbursable Staff Expense	309,000.00	80%	247,200.00
Line Item # 53302 - Professional Serv/Consultants	0.00	80%	0.00
Line Item # 53303 - Public Relations and Information	65,000.00	80%	52,000.00
Line Item # 53402 - Specialized Serv/Technical	118,500.00	80%	94,800.00
Line Item # 55501 - Printing and Binding	139,100.00	80%	111,280.00
Subtotal - Planning	631,600.00		505,280.00
Operations and Maintenance Expense:			
Fixed Route Vehicle Maintenance Expense	7,579,100.00	80%	6,063,280.00
Handy Ride Contracted Operations Expenses	1,637,500.00	80%	1,310,000.00
Subtotal - Operations & Maintenance Exp	9,216,600.00		7,373,280.00
Capital Lease Expense:			
Handy Ride Facility Lease	86,300.00	80%	69,040.00
Fixed Route Tire and Tire Maint. Lease	161,700.00	80%	129,360.00
Subtotal - Capital Lease Expense	248,000.00		198,400.00
TOTALS	\$10,096,200.00		\$8,076,960.00

**FTA FUNDED FY '10
DBE CAPITAL PURCHASING
OPPORTUNITIES AT FRESNO AREA EXPRESS**

FY '10 FAX Capital Contracting Projects

(Listed at 80% Cost - Federal Dollars Only)

(Listed at 100% Cost - American Recovery and Reinvestment Act Dollars Only)

Project	Construction	Materials, Supplies and Equipment	Professional Services	Non-Contracting Opportunities	Total Project Cost
Buses	0	0	0	4,640,000	4,640,000
Passenger Amenities	0	408,000	146,080	53,520	607,600
Non-Revenue Vehicles	0	0	0	230,400	230,400
Intermodal Facility	1,859,760	117,520	117,520	0	2,094,800
Facility Improvements	2,485,760	157,120	157,120	0	2,800,000
On-Bus Video Equipment	0	786,080	0	0	786,080
CNG Fueling Station	147,440	13,600	13,600	0	174,640
Lift Station/Pump	0	92,800	0	0	92,800
Facility Video Equipment	0	97,040	0	0	97,040
Bus Stop Security	0	512,240	0	0	512,240
Bus Wash	0	4,800	0	0	4,800
Handheld Radios	0	16,000	0	0	16,000
Trip Planning Project	0	88,000	352,000	0	440,000
Bus Rapid Transit	200,000	800,000	600,000	0	1,600,000
Travel Training	0	0	32,000	0	32,000
Resurface Bus Yard	0	35,600	4,000	0	39,600
ARRA Buses*	0	0	0	1,800,000	1,800,000
ARRA Regional Farebox System*	0	1,500,000	500,000	300,000	2,300,000
ARRA Automated Passenger Counters*	0	700,000	100,000	200,000	1,000,000
ARRA CNG Compressor*	50,000	150,000	0	50,000	250,000
ARRA Non-Revenue*	0	0	0	112,700	112,700
ARRA Passenger Amenities	1,500,000	2,500,000	750,000	0	4,750,000
Planning Projects	0	0	76,320	782,400	858,720
Total FTA Funding (80% of Project Total)	6,242,960	7,978,800	2,848,640	8,169,020	25,239,420

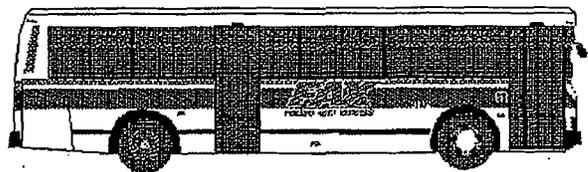
*American Recovery and Reinvestment Act (ARRA) funds require no local match

FISCAL 2010 CAPITAL IMPROVEMENT PROGRAM		
1	Buses	5,800,000
2	Passenger Amenities	759,500
3	Non-Revenue Vehicles	288,000
4	Intermodal Facility	2,618,500
5	Facility Improvements	3,500,000
6	On-Bus Video Equipment	982,600
7	CNG Fueling Station	218,300
8	Lift Station/Pump	116,000
9	Facility Video Equipment	121,300
10	Bus Stop Security	640,300
11	Bus Wash	6,000
12	Handheld Radios	20,000
13	Trip Planning Project	550,000
14	Bus Rapid Transit	2,000,000
15	Travel Training	40,000
16	Resurface Bus Yard	49,500
17	ARRA Buses*	1,800,000
18	ARRA Regional Farebox System*	2,300,000
19	ARRA Automated Passenger Counters*	1,000,000
20	ARRA CNG Compressor*	250,000
21	ARRA Non-Revenue*	112,700
22	ARRA Passenger Amenities	4,750,000
SUBTOTAL - CAPITAL PROJECTS		27,922,700
23	COFCG Planning Staff	309,000
24	FAX Planning Staff	168,700
25	Annual Planning O & M Expenses and Special Projects	293,400
26	Facility Planning Study	95,400
SUBTOTAL - PLANNING PROJECTS		866,500
Reimbursement For Annual Operating Expenses:		
27	Bus Overhaul Program - Federal Share Only	6,063,280
28	Capital Lease - Vehicle Tire Lease - Federal Share Only	129,360
29	Capital Lease - Handy Ride Facility Lease - Federal Share Only	69,040
30	Contracted Paratransit Service - Operations - Federal Share Only	1,310,000
SUBTOTAL - REIMBURSEMENT FOR OPERATING EXP		7,571,680
TOTAL - CAPITAL, PLANNING AND OPERATING PROJECTS		36,360,880

Section: B

Results

Prepared For:
U.S. Department of Transportation
Federal Transit Administration



PAST RESULTS IN CONTRACTING

WITH DBE'S - FISCAL 2009
 July 1, 2008 Through June 30, 2009

Name of Applicant/Recipient: City of Fresno/Fresno Area Express
 Address: 2223 "G" Street
 City/State/Zip: Fresno, CA 93706

Contract Category		Number of Contracts/ Subcontracts DBE	Past Results, FTA Dollars for DBE	Percentage of DBE Participation
Construction		0	\$0	0.00%
Professional Services		0	\$0	0.00%
Materials, Supplies and Equipment	60%	4	\$220	0.01%
	100%			
Other	60%	7	\$6,708	0.21%
	100%			0.00%
TOTALS			\$6,928	0.22%

Total Contract Dollars Awarded In Fiscal 2008/2009: \$3,211,300
Total Number of Contracts Awarded In Fiscal 2008/2009: 1359
Total DBE Contract Dollars Awarded In Fiscal 2008/2009: \$6,928
Total Number of DBE Contracts Awarded In Fiscal 2008/2009: 11

Percentage Of DBE Participation: 0.22% (Total DBE Awards Divided By Total FTA Contract Dollars Awarded)

Name of Preparer: Joe Vargas, Management Analyst III
 Telephone Number: (559) 621-1445
 FAX Number: (559) 488-1065

**FRESNO AREA EXPRESS
CALCULATION OF ANNUAL GOALS FOR FISCAL YEAR '10
(July 1, 2009 - June 30, 2010)**

Name of Applicant/Recipient: City of Fresno/Fresno Area Express
 Address: 2223 "G" Street
 City/State/Zip: Fresno, CA 93706

Contract/Procurement Opportunities Category	Programs Supported by FTA Funds	Percent of Total Cost	Percentage of DBE's to All Businesses	Base DBE Percentage
Construction	7,416,200	23%	13%	2.98%
Materials/Supplies/Equipment	15,258,000	47%	1%	0.47%
Professional Services Total	9,345,800	29%	0%	0.00%
Other	300,800	1%	2%	0.20%
TOTALS	32,320,800			4%

Note: All amounts are rounded to the nearest \$100

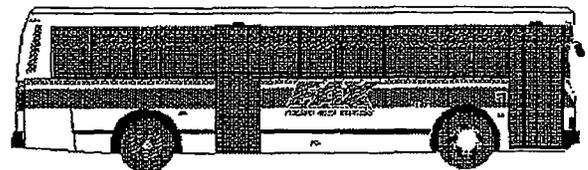
Annual Overall DBE Goal (4%)

* Annual DBE Goal is race neutral

Section: C

Methodology

Prepared For:
U.S. Department of Transportation
Federal Transit Administration





METHODOLOGY

Goals have been established based on the availability of the disadvantaged businesses with the capacity to perform services or provide materials, supplies, and equipment required by Fresno Area Express during FY 2010. Taken into account in establishing this goal has been past year's utilization of DBE vendors, available funding, and anticipated utilization of DBE's in the upcoming fiscal year.

Fresno Area Express is a department of the City of Fresno, and consequently must receive many of its supplies through vendors selected by the Purchasing Department utilizing the competitive bid process (low bidder regardless of DBE status). It is assumed that a centralized purchasing operation can benefit from the economy of scale. Also, most of the facility repairs, building maintenance, and grounds maintenance projects are completed by City staff (General Services Division) thus reducing contracting opportunities for these projects.

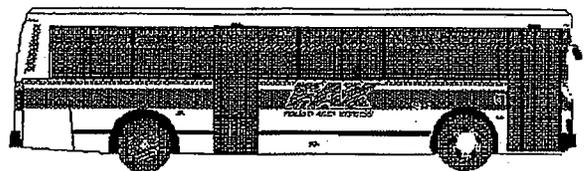
Fresno Area Express is currently working with the Disadvantaged Business section of the Purchasing Division in an effort to improve the utilization of DBE vendors by the City of Fresno and Fresno Area Express specifically. In FY 1995, FAX began accepting certifications from all other transit agencies with an approved DBE program.



*Disadvantaged Business Enterprise (DBE)
Quarterly Progress Reports*

*July 1, 2008
Through
June 30, 2009*

Prepared For:
U.S. Department of Transportation
Federal Transit Administration



Report of DBE Awards and Commitments

U.S. Department
of Transportation

1. Administration FEDERAL TRANSIT ADMINISTRATION 2. Fiscal Year: 2008 3. Report Period: 4
 4. Name of Recipient: CITY OF FRESNO/FRESNO AREA EXPRESS
 5. Address: 2223 "G" STREET
 6. City/State/Zip: FRESNO CA 93706
 7. Annual DBE Goal: 10%
 8. Total prime contracts/procurements awarded this report period to all contractors: (a) Number 348 (b) \$Value \$898,966

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
9. DBE prime contract/procurements awarded this report period	0	1	\$0	\$600
10. DBE subcontracts/procurements awarded this report period				
11. Subcontracting/procurement commitments to DBEs this report period ..	0	1	\$0	\$600
2. Total prime contracts/procurements awarded to date to all contractors:	(a) Number <u>1476</u>		(b) \$Value <u>\$3,081,295</u>	
13. Total awards to date to DBEs:	(a) Number <u>13</u>		(b) \$ Value <u>\$15,786</u>	
			0.51%	

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
14. DBE prime and subcontracts/procurements awards by ethnic group: ...				
Black American	0	1	\$0	\$600
Hispanic American	0	0	\$0	\$0
Native American	0	0	\$0	\$0
Asian-Indian American	0	0	\$0	\$0
Asian-Pacific American	0	0	\$0	\$0
Other	0	0	\$0	\$0
Total	0	1	\$0	\$600
15. Number and \$ Value of DBE prime and subcontract awards by type of work:				
(a) Professional/Consultant Services				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	0	\$0	\$0
(2) _____				
(3) _____				
(b) Construction				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	0	\$0	\$0
(2) _____				
(3) _____				
(c) Supplies				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	0	\$0	\$0
(2) _____				
(3) _____				
(d) Equipment				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	0	\$0	\$0
(2) _____				
(3) _____				
(e) Other				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	2	\$0	\$600
(2) _____				
(3) _____				
Total	0	2	\$0	\$600

16. Name of Prepare Steve Berst 17. Telephone No. (559) 246-5992

The Public reporting burden for this collection of information is estimated to average one hour per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to OMB and the DOT at the following addresses:

Office of Management and Budget
Paperwork reduction Project (2105-0510)
Washington, DC 20502

and

U.S. DOT/OST/OSDBU, S-42
400 Seventh Street, S.W.
Washington, DC 20590

Report of DBE Awards and Commitments

U.S. Department
of Transportation

1. Administration FEDERAL TRANSIT ADMINISTRATION 2. Fiscal Year: 2009 3. Report Period: 1
 4. Name of Recipient: CITY OF FRESNO/FRESNO AREA EXPRESS
 5. Address: 2223 "G" STREET
 6. City/State/Zip: FRESNO CA 93706
 7. Annual DBE Goal: 10%
 8. Total prime contracts/procurements awarded this report period to all contractors: (a) Number 383 (b) \$Value \$722,310

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
9. DBE prime contract/procurements awarded this report period	1	4	\$204	\$2,712
10. DBE subcontracts/procurements awarded this report period				
11. Subcontracting/procurement commitments to DBEs this report period ..	1	4	\$204	\$2,712
12. Total prime contracts/procurements awarded to date to all contractors:	(a) Number <u>1387</u>		(b) \$Value <u>\$2,841,201</u>	
13. Total awards to date to DBEs:	(a) Number <u>14</u>	(b) \$ Value <u>\$35,162</u>	1.24%	

14. DBE prime and subcontracts/procurements awards by ethnic group: ...	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
Black American	0	2	\$0	\$1,200
Hispanic American	0	0	\$0	\$0
Native American	0	0	\$0	\$0
Asian-Indian American	0	1	\$0	\$1,308
Asian-Pacific American	0	0	\$0	\$0
Other	1	1	\$204	\$204
Total	1	4	\$204	\$2,712

15. Number and \$ Value of DBE prime and subcontract awards by type of work:				
(a) Professional/Consultant Services				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	(a) Women	(b) Total	(c) Women	(d) Total
(2)	0	0	\$0	\$0
(3)				
(b) Construction				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	0	\$0	\$0
(2)				
(3)				
(c) Supplies				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	1	\$122	\$122
(2)				
(3)				
(d) Equipment				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	0	\$0	\$0
(2)				
(3)				
(e) Other				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	3	\$0	\$2,508
(2)				
(3)				
Total	0	4	\$122	\$2,630

16. Name of Prepare Greg Eisner 17. Telephone No. (559) 621-1417

The Public reporting burden for this collection of information is estimated to average one hour per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to OMB and the DOT at the following addresses:

Office of Management and Budget
Paperwork reduction Project (2105-0510)
Washington, DC 20502
and
U.S. DOT/OST/OSDBU, S-42
400 Seventh Street, S.W.
Washington, DC 20590

Report of DBE Awards and Commitments

U.S. Department
of Transportation

1. Administration: FEDERAL TRANSIT ADMINISTRATION 2. Fiscal Year: 2009 3. Report Period: 2
 4. Name of Recipient: CITY OF FRESNO/FRESNO AREA EXPRESS
 5. Address: 2223 "G" STREET
 6. City/State/Zip: FRESNO CA 93706
 7. Annual DBE Goal: 10%
 8. Total prime contracts/procurements awarded this report period to all contractors: (a) Number 343 (b) \$Value \$441,751

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
9. DBE prime contract/procurements awarded this report period	1	2	\$164	\$764
10. DBE subcontracts/procurements awarded this report period				
11. Subcontracting/procurement commitments to DBEs this report period ..	1	2	\$164	\$764
12. Total prime contracts/procurements awarded to date to all contractors:	(a) Number <u>1387</u>		(b) \$Value <u>\$2,841,201</u>	
13. Total awards to date to DBEs:	(a) Number <u>14</u>	(b) \$ Value <u>\$35,162</u>		<u>1.24%</u>

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
14. DBE prime and subcontracts/procurements awards by ethnic group: ...				
Black American	0	1	\$0	\$600
Hispanic American	0	0	\$0	\$0
Native American	0	0	\$0	\$0
Asian-Indian American	0	0	\$0	\$0
Asian-Pacific American	0	0	\$0	\$0
Other	1	1	\$164	\$164
Total	1	2	\$164	\$764
15. Number and \$ Value of DBE prime and subcontract awards by type of work:				
(a) Professional/Consultant Services				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	0	\$0	\$0
(2)				
(3)				
(b) Construction				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	0	\$0	\$0
(2)				
(3)				
(c) Supplies				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	1	2	\$0	\$59
(2)				
(3)				
(d) Equipment				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	0	\$0	\$0
(2)				
(3)				
(e) Other				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	1	\$0	\$600
(2)				
(3)				
Total	1	3	\$0	\$659

16. Name of Prepare Greg Eisner 17. Telephone No. (559) 621-1417

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Office of Management and Budget Paperwork reduction Project (2105-0510) Washington, DC 20502	and	U.S. DOT/OST/OSDBU, S-42 400 Seventh Street, S.W. Washington, DC 20590
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Report of DBE Awards and Commitments

U.S. Department
of Transportation

1. Administration: FEDERAL TRANSIT ADMINISTRATION 2. Fiscal Year: 2009 3. Report Period: 3
 4. Name of Recipient: CITY OF FRESNO/FRESNO AREA EXPRESS
 5. Address: 2223 "G" STREET
 6. City/State/Zip: FRESNO CA 93706
 7. Annual DBE Goal: 10%
 8. Total prime contracts/procurements awarded this report period to all contractors: (a) Number 285 (b) \$Value \$1,148,248

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
9. DBE prime contract/procurements awarded this report period	1	2	\$65	\$3,065
10. DBE subcontracts/procurements awarded this report period				
11. Subcontracting/procurement commitments to DBEs this report period . .	1	2	\$65	\$3,065
12. Total prime contracts/procurements awarded to date to all contractors:	(a) Number <u>1387</u>		(b) \$Value <u>\$2,841,201</u>	
13. Total awards to date to DBEs:	(a) Number <u>14</u>		(b) \$ Value <u>\$35,162</u> 1.24%	

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
14. DBE prime and subcontracts/procurements awards by ethnic group: . . .				
Black American	0	0	\$0	\$0
Hispanic American	0	0	\$65	\$65
Native American	0	0	\$0	\$0
Asian-Indian American	0	0	\$0	\$0
Asian-Pacific American	0	0	\$0	\$0
Other	1	2	\$0	\$3,000
Total	1	2	\$65	\$3,065

	Number		\$ Value	
	(a) Women	(b) Total	(c) Women	(d) Total
15. Number and \$ Value of DBE prime and subcontract awards by type of work:				
(a) Professional/Consultant Services				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	0	\$0	\$0
(2) _____				
(3) _____				
(b) Construction				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	0	\$0	\$0
(2) _____				
(3) _____				
(c) Supplies				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	1	1	\$39	\$39
(2) _____				
(3) _____				
(d) Equipment				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	0	\$0	\$0
(2) _____				
(3) _____				
(e) Other				
(1) SEE ATTACHED FORM FOR VENDOR NAME & DETAIL	0	1	\$0	\$3,000
(2) _____				
(3) _____				
Total	1	2	\$39	\$3,039

16. Name of Preparer: Angie Flores 17. Telephone No. (559) 621-1444

The Public reporting burden for this collection of information is estimated to average one hour per response. If you wish to comment on the accuracy of the estimate or make suggestions for reducing this burden, please direct your comments to OMB and the DOT at the following addresses:

Office of Management and Budget
Paperwork reduction Project (2105-0510)
Washington, DC 20502
and
U.S. DOT/OST/OSDBU, S-42
400 Seventh Street, S.W.
Washington, DC 20590

ALL FTA (Includes ARRA)

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS

Please refer to the instructions sheet for directions on filling out this form

1. Submitted to (check only one): FHWA FAA FTA--Vendor Number 1649

2. AIP Numbers (FAA Recipients Only): N/A

3. Federal fiscal year in which reporting period falls: FFY2010
4. Date This Report Submitted: Resubmitted 2/7/2011

5. Reporting Period: Report due June 1 (for period Oct. 1-Mar. 31) Report due Dec. 1 (for period April 1-Sept. 30) FAA annual report due Dec. 1

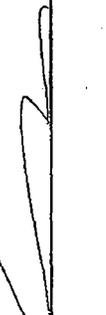
6. Name and address of Recipient: 2223 G Street Fresno, CA 93706

7. Annual DBE Goal(s): Race Conscious Goal 0.00% Race Neutral Goal 4.00% OVERALL GOAL 4.00%

	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
AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD <small>(Total contracts and subcontracts committed during this reporting period)</small>									
8. Prime contracts awarded this period	\$1,371,740	155	\$9,747	2	\$0	0	\$9,747	2	0.7%
9. Subcontracts awarded/committed this period									
TOTAL			\$9,747	2			\$9,747	2	0.7%
DBE AWARDS/COMMITMENTS THIS REPORTING PERIOD - BREAKDOWN BY ETHNICITY & GENDER									
	A	B	C	D	E	F	G	H	I
	Black American	Hispanic American	Native American	Subcont. American	Asian-Pacific American	Non-Minority Women	Other (i.e. not of any other group listed here)	TOTALS (for this reporting period only)	Year-End TOTALS
10. Total Number of Contracts (Prime and Sub)	0	1	0	0	1	0	0	2	2
11. Total Dollar Value	\$0	\$7,797	\$0	\$0	\$1,950	\$0	\$0	\$9,747	\$9,747

	A	B	C	D	E
	Number of Prime Contracts Completed	Total Dollar Value of Prime Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percentage of Total DBE Participation
ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD					
12. Race Conscious	0	0	\$0	\$0	0.0%
13. Race Neutral	155	1,371,740.40		9,747	0.7%
14. Totals	155	1,371,740.40		\$9,747	0.7%

15. Submitted by (Print Name of Authorized Representative): Joe Vargas, Management Analyst III

16. Signature of Authorized Representative: 

17. Phone Number: (559) 621-1445

18. Fax Number: (559) 488-1065

ARRA ONLY

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS

Please refer to the Instructions sheet for directions on filling out this form

1. Submitted to (check only one): FHWA FAA FTA--Vendor Number 1649

2. AIP Numbers (FAA Recipients Only): N/A

3. Federal fiscal year in which reporting period falls: FFY2010
4. Date This Report Submitted: Resubmitted 2/7/2011

5. Reporting Period: Report due June 1 (for period Oct. 1-Mar. 31) Report due Dec. 1 (for period April 1-Sept. 30) FAA annual report due Dec. 1

6. Name and address of Recipient: 2223 G Street Fresno, CA 93706

Race Conscious Goal	0.00%	Race Neutral Goal	4.00%	OVERALL Goal	4.00%
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	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
AWARDS/COMMITMENTS MADE DURING THIS REPORTING PERIOD <small>(total contracts and subcontracts committed during this reporting period)</small>									
8. Prime contracts awarded this period	\$51,450	2	\$1,950	1	\$0	0	\$1,950	1	3.8%
9. Subcontracts awarded/committed this period									
TOTAL			\$1,950	1			\$1,950	1	3.8%

	A	B	C	D	E	F	G	H	I
	Black American	Hispanic American	Native American	Subcont. Asian American	Asian-Pacific American	Non-Minority Women	Other (i.e. not of any other group listed here)	TOTALS (for this reporting period only)	Year-End TOTALS
10. Total Number of Contracts (Prime and Sub)					1			1	1
11. Total Dollar Value					\$1,950			\$1,950	\$1,950

	A	B	C	D	E
	Number of Prime Contracts Completed	Total Dollar Value of Prime Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percentage of Total DBE Participation
ACTUAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD					
12. Race Conscious	0	\$0	\$0	\$0	0.0%
13. Race Neutral	2	\$51,450		\$1,950	3.8%
14. Totals	2	\$51,450		\$1,950	3.8%

15. Submitted by (Print Name of Authorized Representative): Joe Vargas, Management Analyst III

16. Signature of Authorized Representative: 

17. Phone Number: (559) 621-1445

18. Fax Number: (559) 488-1065

FTA ONLY (Excludes ARRA)

UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS

Please refer to the Instructions sheet for directions on filling out this form

1. Submitted to (check only one): FHWA FAA FTA-Vendor Number: 1649

2. AIP Numbers (FAA Recipients Only): N/A

3. Federal fiscal year in which reporting period falls: FFY2010

4. Date This Report Submitted: Resubmitted 2/7/2011

5. Reporting Period: Report due June 1 (for period Oct. 1-Mar. 31) Report due Dec. 1 (for period April 1-Sept. 30) FAA annual report due Dec. 1

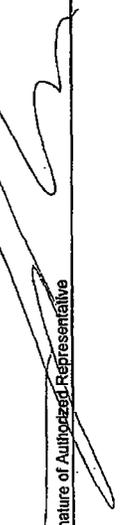
6. Name and address of Recipient: 2223 G Street Fresno, CA 93706

	Race Conscious Goal		Race Neutral Goal		4.00%		OVERALL GOAL		4.00%	
	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	\$1,320,290	153	\$7,797	1	\$0	0	\$7,797	1	0.6%	
9. Subcontracts awarded/committed this period			\$7,797	1			\$7,797	1	0.6%	
TOTAL										

	A	B	C	D	E	F	G	H	I
	Black American	Hispanic American	Native American	Subcont. Asian American	Asian-Pacific American	Non-Minority Women	Other (i.e. not of any other group listed here)	TOTALS (for this reporting period only)	Year-End TOTALS
10. Total Number of Contracts (Prime and Sub)		1						1	1
11. Total Dollar Value		\$7,797						\$7,797	\$7,797

	A	B	C	D	E
	Number of Prime Contracts Completed	Total Dollar Value of Prime Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DBE Participation (Dollars)	Percentage of Total DBE Participation
12. Race Conscious	0	\$0	\$0	\$0	0.0%
13. Race Neutral	153	\$1,320,290		\$7,797	0.6%
14. Totals	153	\$1,320,290		\$7,797	0.6%

15. Submitted by (Print Name of Authorized Representative): Joe Vargas, Management Analyst III

16. Signature of Authorized Representative: 

17. Phone Number: (559) 621-1445

18. Fax Number: (559) 488-1065

January 27, 2010

Copy of 2005 Fresno Bee's Publication is included-for your information -- Thanks)

TO: THE FRESNO BEE
ATTENTION JESSE - LEGAL. 441-6115, Fax: 495-6825

FROM: Beth McDonell. City of Fresno, DBE Program, 621-1182 Fax 488-1069

To be published: Wednesday, February 3, 2010.

Please provide Proof, Price Quote

After publication, please provide "Proof of Publication"

Bill to: City of Fresno - DBE Program, 2101 G Street, Bldg A, Fresno, CA 93726

NOTICE ANNOUNCING CITY OF FRESNO DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM GOALS FOR 2009-2010 IN U.S. DEPARTMENT OF TRANSPORTATION (DOT) ASSISTED CONTRACTS

The City of Fresno is announcing overall goals for Disadvantaged Business Enterprise (DBE) participation for projects financed in part or in whole by the U.S. Department of Transportation (DOT). The goal for the Federal Highway Administration (FHWA) is 11%, Federal Aviation Administration (FAA) is 7%, and Federal Transit Administration (FTA) is 4% for 2009-2010 Federal Fiscal Year.

The rationale for the proposed goals is available for inspection during normal business hours at the City of Fresno General Services Department, Purchasing Division, 2101 "G" Street, for 30 days following the date of this notice. The City and U.S. Department of Transportation will accept comments on the goals for 45 days from the date of this notice.

Comments may be sent to:

City of Fresno
Purchasing Division
Disadvantaged Business Enterprise (DBE) Program
2101 "G" Street Building A
Fresno CA 93706

The United States Department of Transportation
Western Pacific Region WPC
15000 Aviation Blvd Room 2008
Lawndale CA 90261

Comments are for Informational Purposes Only
Date of publication: February 3, 2010

Attachment 4-3

Overall Goal Calculation for FHWA-assisted Projects
(AADPL to the California Transportation Department)

INTERIM EXHIBIT 9-B LOCAL AGENCY DBE ANNUAL SUBMITTAL FORM

TO: CALTRANS DISTRICT 06
District Local Assistance Engineer

The information for exhibit 9-B presented herein, in accordance with Title 49 of the Code of Federal Regulations (CFR), Part 26, and the State of California Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan.

The City of Fresno submits our annual 9-B information for the Federal Fiscal Year 2010 /2011, beginning on October 1, 2011 and ending on September 30, 2012.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

The City of Fresno has designated Joe Gray, Director, Finance Department, as the DBE Liaison Officer for the City of Fresno. In that capacity, the Director is responsible for implementing all aspects of the DBE program and ensuring that the City of Fresno complies with all provisions of 49 CFR Part 26. The Director has direct access to the City Council and the City Manager concerning DBE program matters. The DBELO has a professional staff of one assigned to the DBE program and the point of contact for the DBE Program is: Beth McDonell, DBE Program Coordinator for the City of Fresno. The address of the DBE Program is 2101 "G" Street, Building A, Fresno, CA 93706, phone number 559-621-1182, email: Beth.McDonell@fresno.gov. An organization chart displaying the DBELO's position in the organization is found in Attachment B to this program.

Planned Race Neutral Measures

The City of Fresno has a very assertive outreach program not only related to DBE firms, but also to local, small businesses. The City of Fresno is a member of the San Joaquin Small Business Council; we host training sessions on how to become certified as a DBE and as a small business; we participate in community outreach events such as the Procurement Fairs, Blue Book of Construction Showcase; Central California Hispanic Chamber of Commerce Business Expos, Calmentor A&E fairs; and Business Matchmaking Events.

We attend various Chambers of Commerce meetings such as the San Joaquin Valley Black Chamber of Commerce, Central California Black Chamber of Commerce, Fresno Area Hispanic Chamber of Commerce, and other community organizations such as the National Association of Women in Construction.

The City of Fresno is a certifying agency for Disadvantaged Business firms in partnership with Caltrans and other certifying agencies. We hold mandatory pre-bid meetings when applicable, we also attend Caltrans mandatory pre-bid meetings to provide information to potential DBE firms who would like to become certified.

The City of Fresno works in partnership with the Small Business Development Center, SCORE and the Asian Business Incubator and Resource Center providing referrals and training on how to do business with the City of Fresno. The City of Fresno has an on-line procurement system in which small and disadvantaged businesses can download plans and specifications at no cost; we are also in

partnership with the Central California Builder's Exchange who partners with other statewide plan rooms providing the opportunity for small and disadvantaged businesses throughout the State of California to view our plans and specifications.

The City of Fresno will also utilize the Race Neutral means as outlined under Section V of the California Department of Transportation Race-Conscious DBE Program Implementation Agreement for Local Agencies

Prompt Pay

Federal regulation (49 CFR 26.29) requires one of three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

The City of Fresno will use Method #3 in our procurement/payment process, as indicated in Attachment A.

Prompt Pay Enforcement Mechanism

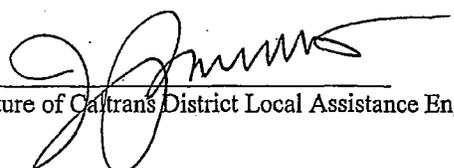
49 CFR, Part 26.29(d) requires providing appropriate means to enforce prompt payment. These means may include appropriate penalties for failure to comply with the terms and conditions of the contract. The means may also provide that any delay or postponement of payment among the parties may take place only for good cause with the local agency's prior written approval. The City of Fresno will monitor payments to all subcontractors, including DBE's, through our Construction Management Division as part of the inspection and progress payment process. See Attachment B.


(Signature)

7/27/11
Date

Joe Gray
Director, Finance Department
City of Fresno

559-621-1182
Phone Number


(Signature of Caltrans District Local Assistance Engineer [DLAE])

1/11/12
Date

Attachment A

Prompt Payment of Withheld Funds to Subcontractors

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

- Method 1:** No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- Method 2:** No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- Method 3:** The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Distribution: (1) Original - DLAE
(2) Signed copy by the DLAE - Local Agency

DBE Annual Submittal Form (07/1/10)

Attachment B

October 7, 2011

CITY OF FRESNO

Construction Management Division Procedure for Prompt Payment Enforcement Mechanism of Withheld Funds to Subcontractors

(Federal regulation 49 CFR 26.29) requires federal- aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

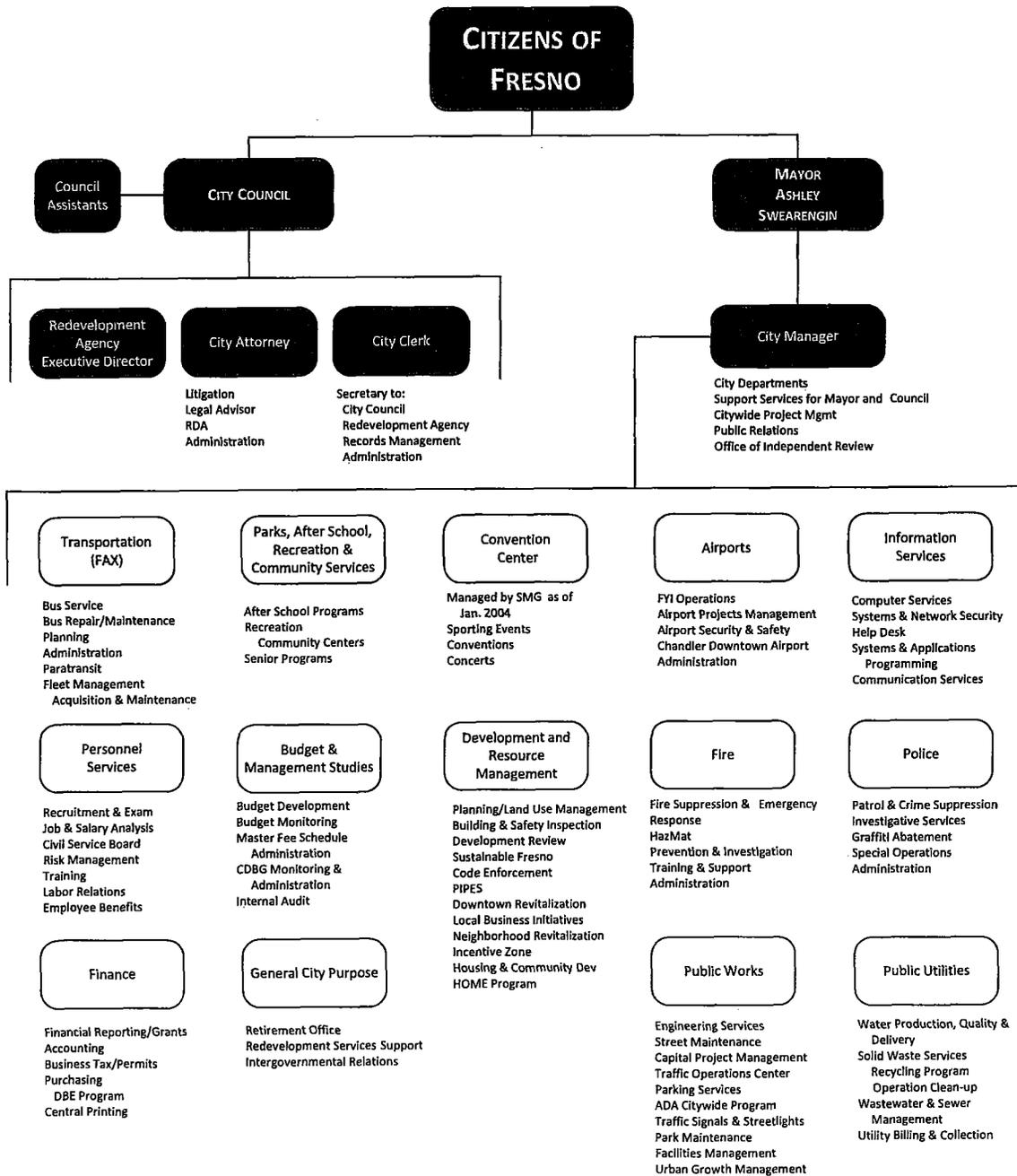
The City of Fresno shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the city. (Federal regulation 49 CFR 26.29 Method 3)

The following procedures will be used to comply with Method 3;

- At pre-bid meetings - The DBE Coordinator will point out the requirements for prompt payment under the federal requirements. Successful bidder will provide a list of all subcontractors to be used under the contract and a full description of subcontracted work.
- At the pre-construction meeting- The project Inspector will require the above list to be provided as a submittal along with a project schedule that identifies any of the subcontractors which may have their work completed/accepted prior to the completion of the entire project.
- During construction-When a progress payment is prepared, the inspector will review the schedule and the actual completed work to date and determine if there is any subcontractor which has completed 100% of their contract.
- If no subcontractor has completed 100% of their contract, the review which has taken place is documented for that payment.
- If there is a subcontractor which has completed 100% of their contract, staff will contact the prime contractor and verify that the subcontractor has completed 100% of his work.
- If the prime contractor agrees that the subcontractor's work is complete, a letter of acceptance for that subcontractor's portion of work will be sent, (letter to prime & sub), and the payment will be processed releasing retention for that portion of the work. If the prime contractor disagrees, the remaining work is documented and no release is included for that payment.

- After a release of retention for incremental acceptance, staff will contact the subcontractor to verify payment to the subcontractor within 30 days after City payment to the prime. Documentation of verification of payment will be filed. If prompt payment has not been made the City will notify the prime contractor and will proceed with penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code.

City Organizational Chart FY 2012



INTERIM EXHIBIT 9-B LOCAL AGENCY DBE ANNUAL SUBMITTAL FORM

TO: CALTRANS DISTRICT 06
District Local Assistance Engineer

The information for exhibit 9-B presented herein, in accordance with Title 49 of the Code of Federal Regulations (CFR), Part 26, and the State of California Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan.

The City of Fresno submits our annual 9-B information for the Federal Fiscal Year 2010 /2011, beginning on October 1, 2010 and ending on September 30, 2011.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

The City of Fresno has designated Ken Nerland, Director, General Services Department, as the DBE Liaison Officer for the City of Fresno. In that capacity, the Director is responsible for implementing all aspects of the DBE program and ensuring that the City of Fresno complies with all provisions of 49 CFR Part 26. The Director has direct access to the City Council and the City Manager concerning DBE program matters. The DBELO has a professional staff of one assigned to the DBE program and the point of contact for the DBE Program is: Beth McDonell, DBE Program Coordinator for the City of Fresno. The address of the DBE Program is 2101 "G" Street, Building A, Fresno, CA 93706, phone number 559-621-1182, email: Beth.McDonell@fresno.gov. An organization chart displaying the DBELO's position in the organization is found in Attachment B to this program.

Planned Race Neutral Measures

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The City of Fresno will also utilize the Race Neutral means as outlined under Section V of the California Department of Transportation Race-Conscious DBE Program Implementation Agreement for Local Agencies

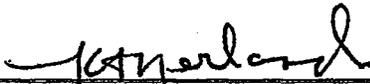
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Federal regulation (49 CFR 26.29) requires one of three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

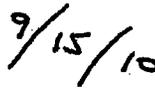
The City of Fresno will use Method #3 in our procurement/payment process, as indicated in Attachment A.

Prompt Pay Enforcement Mechanism

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(Signature)



Date

Ken Nerland
Director, Department of General Services
City of Fresno

559-621-1182

Phone Number



(Signature of Caltrans District Local Assistance Engineer [DLAE])



Date

Attachment A

Prompt Payment of Withheld Funds to Subcontractors

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

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Distribution: (1) Original - DLAE
(2) Signed copy by the DLAE - Local Agency

DBE Annual Submittal Form (07/ 1/10)

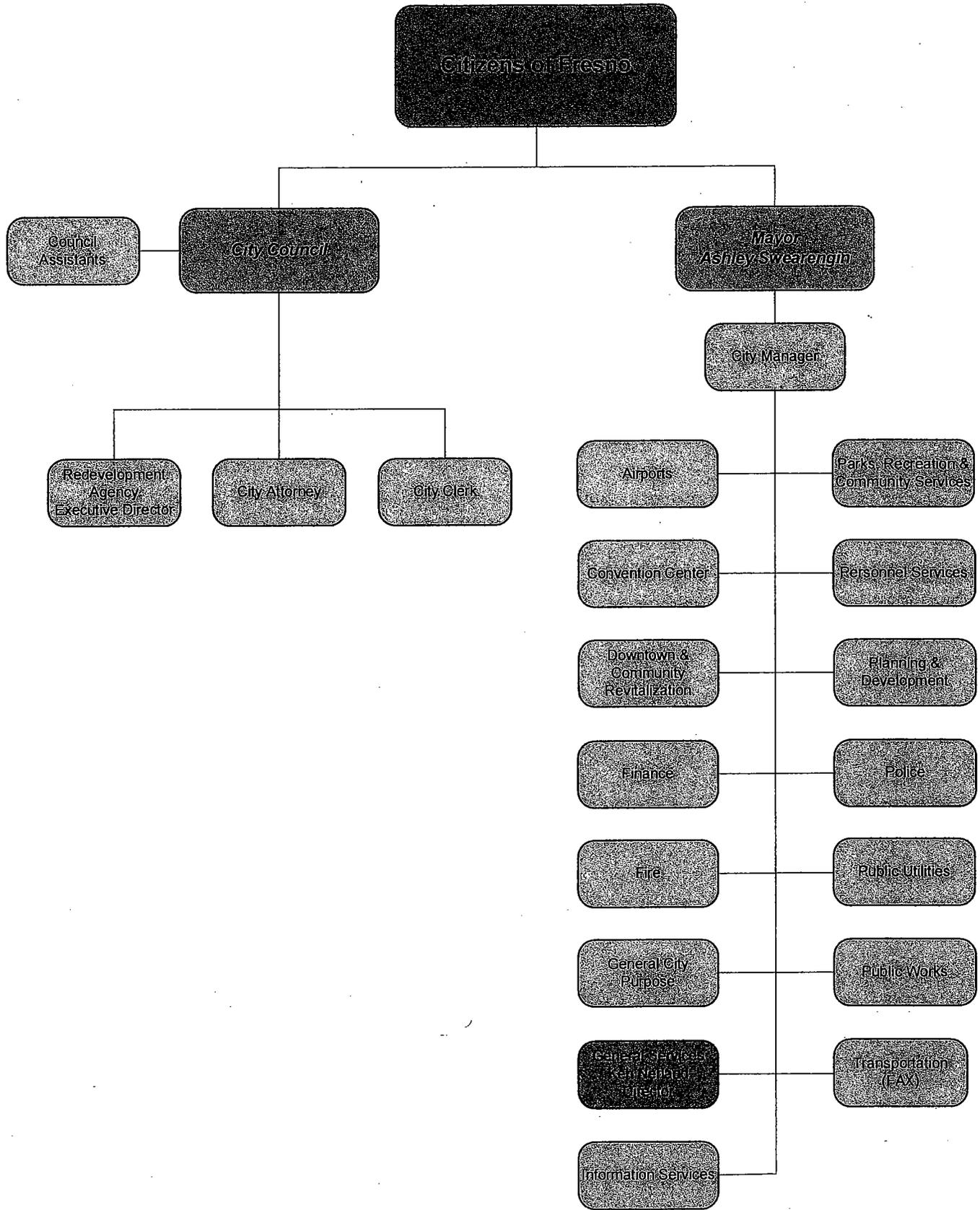


Exhibit 9-B Local Agency DBE Annual Submittal Form

TO: CALTRANS DISTRICT 06
District Local Assistance Engineer

The amount of the Annual Anticipated DBE Participation Level (AADPL) and methodology are presented herein, in accordance with Title 49 of the Code of Federal Regulations (CFR), Part 26, and the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan.

The City of Fresno submits our AADPL information. We have established an AADPL of 11 %, 4 % Race Neutral; 7% Race Conscious for the Federal Fiscal Year 2009 /2010, beginning on October 1, 2009 and ending on September 30, 2010.

Methodology

The City of Fresno has chosen the bidder's list method of establishing the AADPL for the Federal Fiscal Year 2009 – 2010 for FHWA funded projects. The City of Fresno has kept a bidder's list for the past two years and has had an average of 11% DBE participation in our procurement process. After reviewing the bidders list along with the information obtained in the suggested methodology provided by Caltrans, it was determined that a goal of 11% overall AADPL goal is more realistic for the City's DBE participation, with a split of four percent (4%) Race Neutral and seven percent (7%) Race Conscious. (See Attachment B, pages 1 through 8)

The alternate method utilizing the Census Bureau Data, the CUCP DBE Directory and Weighting based on work categories yielded a 4.78% overall goal with a 1.83% Race Neutral participation and 2.95% Race Conscious Participation, which do not appear to be appropriate figures. The market area selected for this method was Fresno, Kings, Tulare, Kern, Madera and Merced counties. (See Attachment B, pages 9, 10 and 11)

Disadvantaged Business Enterprise Liaison Officer (DBELO)

The City of Fresno has designated Ken Nerland, Director, General Services Department, as the DBE Liaison Officer for the City of Fresno. In that capacity, the Director is responsible for implementing all aspects of the DBE program and ensuring that the City of Fresno complies with all provisions of 49 CFR Part 26. The Director has direct access to the City Council and the City Manager concerning DBE program matters. The DBELO has a professional staff of two assigned to the DBE program and the point of contact for the DBE Program is: Beth McDonell, DBE Program Coordinator for the City of Fresno. The address of the DBE Program is 2101 "G" Street, Building A, Fresno, CA 93706, phone number 559-621-1182, email: Beth.McDonell@fresno.gov. An organization chart displaying the DBELO's position in the organization is found in Attachment C to this program.

Planned Race-Neutral Measures

The City of Fresno has a very assertive outreach program not only related to DBE firms, but also to local, small businesses. The City of Fresno is a member of the San Joaquin Small Business Council; we host training sessions on how to become certified as a DBE and as a small business; we participate in community outreach events such as the Small Business Development Days, Procurement Fairs and Business Matchmaking Events. We attend various Chambers of Commerce meetings such as the San Joaquin Valley Black Chamber of Commerce, Central California Black Chamber of Commerce, Fresno Area Hispanic Chamber of Commerce, and other community organizations such as the National Association of Women in Construction.

The City of Fresno is a certifying agency for Disadvantaged Business firms in partnership with Caltrans and

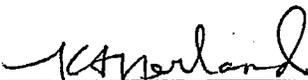
other certifying agencies. We hold mandatory pre-bid meetings when applicable, we also attend Caltrans mandatory pre-bid meetings to provide information to potential DBE firms who would like to become certified. The City of Fresno works in partnership with the Small Business Development Center providing referrals and training on how to do business with the City of Fresno. The City of Fresno has an on-line procurement system in which small and disadvantaged businesses can download plans and specifications at no cost; we are also in partnership with the Central California Builder's Exchange who partners with other statewide plan rooms providing the opportunity for small and disadvantaged businesses throughout the State of California to view our plans and specifications. The City of Fresno is also in the process of becoming a reciprocity partner with the State of California Department of General Services in the small and disabled veteran certification.

The City of Fresno will also utilize the Race Neutral means as outlined under Section V of the California Department of Transportation Race-Conscious DBE Program Implementation Agreement for Local Agencies.

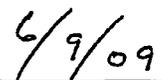
Prompt Pay

Federal regulation (49 CFR 26.29) requires one of three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage, kept by the prime contractor or subcontractor, to a subcontractor. The City of Fresno will use Method #3 in our procurement/payment process, as indicated in Attachment A.

49 CFR Part 26.29(d) requires providing appropriate means to enforce prompt payment. These means may include appropriate penalties for failure to comply with the terms and conditions of the contract. The means may also provide that any delay or postponement of payment among the parties may take place only for good cause, with the local agency's prior written approval. The City of Fresno will monitor payments to all subcontractors, including DBE's, through our Construction Management Division as part of the inspection and progress payment process.



(Signature)



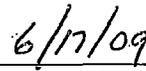
Date

Ken Nerland
Director, Department of General Services
City of Fresno

559-621-1182
Phone Number



(Signature of Caltrans District Local Assistance Engineer [DLAE])



Date

Distribution: (1) Original - DLAE
(2) Signed copy by the DLAE - Local Agency

Attachment A

Prompt Payment of Withheld Funds to Subcontractors

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

Please check the box of the method chosen by the local agency to ensure prompt and full payment of any retainage.

- Method 1:** No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- Method 2:** No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- Method 3:** The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2007 - 2009 BIDDERS LIST CONTRACTOR SUMMARY 7-1-07 to 6-30-09

CONTRACTOR	WORK CATEGORY	DBE CERT #	ETHNICITY/ GENDER	ADDRESS	PHONE	FAX	CONTACT	EMAIL
A-1 Ornamental Iron	Fencing	32142	HISP/M	PO Box 6080 Fresno 93703	233-2208	233-6849	Stephanie McShane	
A-C Electric Company	Electrical	N/A	N/A	PO Box 12102 Fresno				
Ace Fence	Fencing	8914	HISP/M					
Advanced Masonry	Masonry	N/A	N/A	PO Box 629 Clovis 93613				
Agee Construction Corp	General Engineering	N/A	N/A					
Air Control Balancing	Water/Air Balance	N/A	N/A	3901 Buck Owens Blvd Bakersfield 93308				
Air Kool Service	HVAC	N/A	CAUCIF	2379 S. "G" Street Fresno 93721	486-4570		Mark Niehoff	
Alert-O-Life	Traffic Control	16345	N/A	Fresno				
All West	Concrete	N/A	N/A					
Allante Fence	Fencing	28032	HISP/M					
Allen's Cabinet & Fixtures	Casework	N/A	N/A	Lincoln				
Alisport Athletics	Playground Equip.	N/A	N/A	PO Box 9666 Fresno	651-1776	651-0205	Patricia Alvarez	
American Incorporated	HVAC	N/A	N/A	1345 N. American Visalia 93291	288-9886	288-2908	John Sloan	
American Paving	General Engineering	N/A	N/A	PO Box 4348 Fresno 93744				
Anthony's Laser Leveling	General Engineering	31152	HISP/F	PO Box 790 Goshen 93227				
APCO/Asphalt Paving Co.	Asphalt Dike/Curb	N/A	N/A	2647 N. Weber Fresno				
Arcade Construction/Alcal	Insulation	N/A	N/A	1536 Calloway Dr. Bakersfield 93312	661-580-1001	661-589-9509	Patti Austin	
Austin Enterprises	Crack Sealing	13602	HISP/F	935 Barstow, #22 Clovis 93612	323-0216	323-0427	Altan	
B & B Construction Services	General Engineering	N/A	N/A	Sacramento				
B.T. Mancini	Flooring	N/A	N/A	3150 File Circle Sacramento 95827				
Bangar Contractor's Corp.	HVAC	N/A	N/A	Sonora				
Barton	Doors/Frames	N/A	N/A					
BDS Construction	Concrete	26805	NATAM/M					
Bedard Controls	EMS Controls	N/A	N/A	4644 W. Jennifer Fresno 93722				
Been Enterprise	Landscape, Irrigation	N/A	N/A	850 San Jose #116 Clovis 93612	298-8864		David Been	
Best Electrical	Electrical	N/A	N/A	Merced				
Better Flooring	Flooring	N/A	N/A	Fresno				
Biggs, Myers, & Bless	Oil Spreader	N/A	N/A	PO Box 1509 Visalia 93279	739-1216			
Bill Nelson General Engineering	Underground	N/A	N/A	401 W. Fallbrook #104 Fresno 93711				
Bill's Striping	Striping	N/A	N/A	711 W. Yosemite Madera 93637	673-2678		Bill	
BMY Construction	General Building	N/A	N/A	5493 E. Olive Fresno				
Bobby Mack Grinding/Penhall	Grinding	N/A	N/A					
Bobo Construction	General Building	N/A	N/A	9728 Kent St. Elk Grove 95624				

2007 - 2009 BIDDERS LIST CONTRACTOR SUMMARY 7-1-07 to 6-30-09

CONTRACTOR	WORK CATEGORY	DBE CERT #	ETHNICITY/ GENDER	ADDRESS	PHONE	FAX	CONTACT	EMAIL
Bone Construction, Inc.	General Engineering	N/A	N/A	PO Box 5173 Fresno 93755				
Bowen Company	Demolition	N/A	N/A	4664 S. Cedar Fresno 93725				
BQI	Doors/Frames	N/A	N/A	San Jose				
Brar Construction & Development, Inc.	General Engineering	N/A	N/A	PO Box 58 Madera CA 93639	662-1449	662-1429	Lak Brar	
Bromack	Woodwork	EXPIRED	EXPIRED	Los Angeles			Brian Fairbanks	
Browning Contractors	Underground	N/A	N/A	5410 E. Home Fresno 93727	346-0660	346-0626		
Brunna Enterprises	Asbestos Abatement	N/A	N/A	3461 W. Ashlan Fresno 93722				
CA Tile Installers	Ceramic Tile	N/A	N/A	San Jose				
Cal Fresno Oil	Oil Spreader	N/A	N/A					
Cal SinglePly	Roofing	N/A	N/A	Rocklin				
Cal Valley General Engineering	General Engineering	N/A	N/A	6271 W. Bullard Fresno 93722	274-0300	274-0311	Louis Avila	
California Construction Survey	Survey	N/A	N/A	2801 Airport Dr. #202 Madera 93637				
California Striping	Striping	N/A	N/A	Fresno				
CalScape	Landscape, Irrigation	N/A	N/A					
Caltrans Fineline Striping	Striping/Signs	N/A	N/A	3800 Palmdale Ave. #420-390 Modesto 95356				
Carman Pest Management	Pest Control	22247	CAUCIF					
Carrier Corporation	HVAC	N/A	N/A	2612 N. Business Park #101 Fresno 93727	346-0578	346-0583	Robert Conover	
Castle Construction	General Building	N/A	N/A	2780 N. Miami. #101 Fresno 93727	346-1100	346-1110	Reno Coletti	
CCN Flooring	Flooring	N/A	N/A	Folsom				
CentCal	Demolition	N/A	N/A	Fresno				
Central Valley Asphalt	General Engineering	N/A	N/A	23494 Road 196 Lindsay 93247				
Chrtsp Company	Striping/Signs	N/A	N/A	2280 S. Lilac Bloomington 92316				
Cindy Bales Engineering	Electrical	33153	CAUCIF	PO Box 1600 Big Bear City 92314	909-585-1557		Cindy Bales	
Clay Miranda Trucking	Trucking	GRADUATED	GRADUATED	PO Box 11983 Fresno 93777				
CMC Rebar	Reinforcing Steel	N/A	N/A					
Collins Electric	Electrical	N/A	N/A	1809 N. Helm #7 Fresno 93727	454-8164		Dave Helsel	dahelsel@collinselectric.com
Contra Costa Electric	Electrical	N/A	N/A	4690 E. Carmen Fresno 93703				
Cool Air Specialty	HVAC	20716	HISP/M	PO Box 63 Selma 93662	896-8322		Ben Baca	
Cruco Construction Group	General Engineering	N/A	N/A	2443 Foundry Park Fresno 93706	498-3639	498-3527	David Cruce	
CXT	Building	N/A	N/A	3808 Sullivan Rd. Spokane WA				
D O D Construction	Concrete	30081	AA/M					
Dave Christian Construction	General Engineering	N/A	N/A	2233 S. Minnewawa Fresno 93727	255-1222	255-1292	Jim Christian	debble@davechristiancon
Davis Moreno Construction, Inc.	General Engineering	N/A	N/A	4720 N. Blythe Fresno 93722				

2007 - 2009 BIDDERS LIST CONTRACTOR SUMMARY 7-1-07 to 6-30-09

CONTRACTOR	WORK CATEGORY	DBE CERT #	ETHNICITY/ GENDER	ADDRESS	PHONE	FAX	CONTACT	EMAIL
Dawson-Mauldin Construction, Inc.	General Engineering	34661	CAUC/F	1025 E. Nebraska Selma 93662	714-378-1533	714-378-1531	Sandra Dawson	sandradawson@dawson-
Decorator Drapery	Window Coverings	N/A	N/A	Friant				
Design For Health	Asbestos Abatement	DENIED	DENIED	3574 Kettner Blvd San Diego				
Designer Heating and Air	HVAC	N/A	N/A	Tulare				
DL Construction	General Engineering	N/A	N/A	Fresno	790-0732	274-1579	Dat Luong	
Don Berry Construction	General Engineering	N/A	N/A	PO Box 620 Selma 93662				
Dorfmeier Masonry	Masonry	N/A	N/A					
Doty Construction	Framing	N/A	N/A	5932 E. Lansing Fresno 93727	647-1194		Ted Doty	
Durham Construction Co, Inc	General Building	N/A	N/A	1025 Holland Clovis 93612	294-9500	294-9200	Chris Durham	
ECL	HVAC	N/A	N/A	Clovis				
Elite Landscaping	Landscape, Irrigation	N/A	N/A	2972 Larkin Avenue Clovis 93612				
Emertian	Casework	N/A	N/A	Fresno				
Emmett's Excavation	General Engineering	N/A	N/A	1477 Menlo Clovis 93611				
Equity Window	Glass/Glazing	N/A	N/A	Fresno				
ERG Transit Systems, Inc.	Fare Collection	N/A	N/A	1800 Sutter St. Ste. 900, Concord 94520				
Espinosa Survey	Survey	12505	HISP/M	5464 S. Elm Ave Fresno 93706	442-0883	442-0884	Pete Espinosa	
Expansions Specialties	Architectural Joints	N/A	N/A	Henderson Nevada				
Expert Mechanical	Piping	N/A	N/A	4851 E. Pico Fresno 93726				
F. Rogers Insulation	Insulation	N/A	N/A	3816 S. Willow Fresno 93725				
Fab Tech	Structural Steel	N/A	N/A					
FACT	Automatic Doors	N/A	N/A					
Flairon West, Inc	General Engineering	N/A	N/A	2100 Goodyear Rd. Benicia 94510				
Floyd Johnston Construction, Inc.	General Engineering	N/A	N/A	2301 Herndon Clovis 93611	299-7373	323-9446	Greg Streicher	
FM Diaz Construction, Inc.	General Engineering	22472	HISP/M	4650 E. Weathermaker Fresno 93703				
FM Grinding	Grinding	N/A	N/A	336 E. Gish Rd. San Jose 95112				
Four C's Service	Sheet Metal, HVAC	N/A	N/A					
Fresno Concrete	Concrete	203	HISP/M	5450 S. Villa Fresno 93725				
Fresno Landscape	Landscape, Irrigation	35904	HISP/F	1243 N. Backer Fresno 93703				
Fresno Overhead Door	Overhead Doors	N/A	N/A	Fresno				
Fresno Plumbing & Heating	Plumbing	N/A	N/A	2585 N. Larkin Fresno 93727	294-0200	294-0300	Larry Kumppe	
Fryer Roofing	Roofing	N/A	N/A					
Fryer Roofing	Roofing	N/A	N/A	4877 W. Jennifer Fresno				
G & G Specialty Construction	General Building	N/A	N/A	2209 W. 1st St.#113, Tempe AZ 85281	480-921-4079	480-921-3506	Charles Goodballet	

2007 - 2009 BIDDERS LIST CONTRACTOR SUMMARY 7-1-07 to 6-30-09

CONTRACTOR	WORK CATEGORY	DBE CERT #	ETHNICITY/ GENDER	ADDRESS	PHONE	FAX	CONTACT	EMAIL
Ganduglia, Trucking	Oil Spreader	N/A	N/A					
Garcia Paving	General Engineering	375	HISP/M	2951 S. Elm Fresno 93706	266-3258	266-8337	Cliff Hayes	
Garret Construction	General Engineering	N/A	N/A	2359 S. East Ave Fresno 93706				
General Crane	Crane and Riggin	N/A	N/A	PO Box 12043 Fresno 93776				
George Dakovich & Son, Inc.	Underground	N/A	N/A	6155 N. Golden state Blvd. Fresno 93722	277-8092	277-8096	Den Dakovich	
Glenco	Concrete	N/A	N/A	8758 E. Barslow Clovis 93612				
Global Road Sealing	Traffic Loops	31176	ASIAN/M	6941 Klamath Dr. Westminster 92683	714-893-0845		Tri Thuong La	
Graham Concrete	Concrete	CLOSED	CLOSED	1923 Dayton # 103 Clovis 93612				
Granite Construction Co.	General Engineering	N/A	N/A	PO Box 50085 Watsonville 95076	441-5700	831-768-4021	Larry Stauch	
H & K Concrete Cutting	Sawcutting	GRADUATED	GRADUATED	Long Beach	298-7541		Pat Krueger	
H. Toji Co.	Signs	EXPIRED	EXPIRED					
Halopoff & Sons, Inc.	Underground	N/A	N/A	140 E. Morton Porterville 93257	781-7676	781-8055	John Halopoff	
Harris Air Conditioning and Heating	Sheet Metal, HVAC	N/A	N/A					
Harris Electrical	Electrical	N/A	N/A	4679 N. El Capitan Fresno				
Harris Rebar	Reinforcing Steel	N/A	N/A					
Haydon Construction	Underground	N/A	N/A	PO Box 185 Clovis 93613-0185				
Henderson Construction	General Engineering	28055	NATAM/M	2100 N. Winery Fresno 93703	455-1980	455-1987	Mike Henderson	
Heritage Bomanite	Decorative Concrete	N/A	N/A	5651 Fountain Way Fresno				
Hobbs Construction	General Engineering	N/A	N/A	8850 N. Meridian Fresno 93720				
HPS Mechanical	HVAC	N/A	N/A	3100 E. Belle Terrace Bakersfield 93307	661-397-2121	661-396-2589		
Insulation Contractors	Insulation	N/A	N/A	PO Box 2336 Fresno				
Ireland	Woodwork	N/A	N/A					
Jim Crawford Construction, Inc.	General Engineering	N/A	N/A	1189 Hoblitt Clovis 93612	299-0306	299-1958	Brenda Massicotte	
John Campbell Construction	General Building	N/A	N/A	PO Box 1662 Clovis 93613	297-7582	297-7582	John Campbell	
John Gorsky Construction	Underground	N/A	N/A	1134 E. Douglas Ave. Visalia 93292				
JWT General Engineering, Inc.	General Engineering	N/A	N/A	PO Box 2549 Clovis 93613	325-3827	325-1584	Josh Williams	wlge@sbglobal.net
Karsyn	Drywall	N/A	N/A					
Kasco Fab	Structural Steel	N/A	N/A					
Kelly C. Broyles Construction	Underground	N/A	N/A	2639 N. Business Park #102 Fresno 93727	294-8877	294-9977	Kelly Broyles	
King Kahn Drilling	Playground Equip.	N/A	N/A					
Krazan and Associates	Quality Control	N/A	N/A	215 W. Dakota Clovis 93612	348-2200		Charmaine George	
Kroeker, Inc.	Demolition	N/A	N/A	4827 S. Chestnut Fresno 93725				
Lane Electric	Electrical	N/A	N/A	2457 N. Bundy Fresno				

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CONTRACTOR	WORK CATEGORY	DBE CERT #	ETHNICITY/ GENDER	ADDRESS	PHONE	FAX	CONTACT	EMAIL
Larry Wolters Lawson	Masonry HVAC	N/A N/A	N/A N/A					
Lewis C. Nelson & Sons, Inc.	General Building	N/A	N/A	3400 McCall Suite 100 Selma 93662				
Lockwood General Engineering	General Engineering	N/A	N/A	10533 W. Goshen Ave. Visalia 93291				
Loop Electric	Traffic Signals	N/A	N/A					
Lyles Mechanical, Inc.	Underground	N/A	N/A	PO Box 4287 Fresno 93744				
Madco Electric	Electrical	N/A	N/A	2135 E. Front St. Selma 93662	896-5637	896-4518	Michael Merigjan	
Manual Brothers, Inc.	Electrical	N/A	N/A	908 Taylerville Rd # 104 Grass Valley 95949				
Mark Wilson Construction, Inc	General Building	N/A	N/A	5799 E. Clinton Fresno 93727	348-0421	348-0471	Mark Wilson	
Mass X	General Engineering	N/A	N/A	7878 E. Garland Fresno 93727				
Mattos Underground Construction, Inc.	Underground	37417	CAUC/F	819 W. Wood Laton 93242			Nannette Mattos	
MCH Electric	Electrical	N/A	N/A	31084 S. Hwy 33 Tracy 95304	209-835-9755	209-835-9745	Jim Humphrey	
MD Insulation Co.	Insulation	N/A	N/A	9702 Klingerman St. So. El Monte 91733				
Meadows Construction Services, Inc.	General Building	N/A	N/A	1691 Jenks Drive Corona 92880				
Menefee Construction	General Engineering	N/A	N/A	7802 E. Manning Fowler 93625				
Mike Nelson Co.	Drywall	N/A	N/A					
Miles Sheet Metal	Sheet Metal, HVAC	N/A	N/A	PO Box 25306 Fresno 93728				
MS Fire Protection	Fire Protection	N/A	N/A					
Mussin Construction	Concrete	N/A	N/A	5673 W. Barstow Fresno 93722				
Nick Champ Enterprises	Fencing	N/A	N/A					
Nish-ko	Landscape, Irrigation	9483	ASIAN/IM	713 N. Valentine Fresno				
Notte Sheet Metal	HVAC	N/A	N/A					
O'Neal Masonry	Masonry	N/A	N/A	Clovis				
Ortiveros Concrete	Concrete	32929	HISP/IM					
Outdoor Environments	Directional Boring	N/A	N/A					
P&G Communications, Inc.	Underground	N/A	N/A	8721 W. Sunnyview Ave. Visalia 93291				
Pac Con Construction	Concrete	N/A	N/A	12207 Riverfront Park Dr. Bakersfield 93311				
Pacific Masonry	Masonry	N/A	N/A	12408 E. McKinley Sanger				
Papich Construction	General Engineering	N/A	N/A	1686 Ramona Ste. D Grover Beach 93433				
PARC Environmental	Asbestos Abatement	N/A	N/A					
Patch Masters	AC Paving	CLOSED	CLOSED					
Patton Air Conditioning	HVAC	N/A	N/A	272 N. Palm Fresno 93701				
Pavement Recycling System/PRS	Grinding	N/A	N/A	PO Box 1266 Riverside, CA 92502				

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CONTRACTOR	WORK CATEGORY	DBE CERT #	ETHNICITY/GENDER	ADDRESS	PHONE	FAX	CONTACT	EMAIL
Performance Mechanical	HVAC	N/A	N/A	701 Willow Pass Rd, #2 Pillsburg, 94565				
Precision Analytical, Inc.	General Engineering	N/A	N/A	321 19th Street, Bakersfield 93301	661-323-1882	661-323-1684	James LeBaugh	
Prestige Electric	Electrical	N/A	N/A	3870 N. Ann Fresno 93272				
Quality Carpet Design Center	Flooring	N/A	N/A					
R.J. Berry-Jr., Inc.	General Engineering	N/A	N/A	PO Box 468 Selma 93662	896-1680	896-1682	Robt. J. Berry, Jr.	
Richard A. Heaps Electrical, Inc.	Electrical	N/A	N/A	8909 Florin Rd. Sacramento 95829	916-386-8857	916-386-1354	Diane K. Meehan	
Roadway Electrical Works, Inc	Electrical	DEMIED	DEMIED	PO Box 5083 Modesto 95352	209-578-4749	209-522-9285	Marlene McDevitt	
Robyn Construction	Carpentry	N/A	N/A	Selma				
Roebeler Contracting Inc.	General Building	N/A	N/A	1241 Hawks Flight Court El Dorado Hills 95762	916-939-4000	916-939-4027	Robert Kjorne	
Ron Peterson Painting	Painting	N/A	N/A	3007 Bliss, Clovis				
Roof Systems dba Nations Roof West	Roofing	N/A	N/A					
Ro's Precise Painting	Painting	N/A	N/A	Fresno				
S. J. Amoroso Construction	General Building	N/A	N/A	390 Bridge Parkway Redwood Shores 94065				
Sacramento Building Products	Insulation	N/A	N/A	Fresno				
Safety Network	Traffic Control	N/A	N/A	2361 N. Larkin Fresno 93727				
Safety Striping	Striping	N/A	N/A	PO Box 1020 Goshen 93227				
Sam's Equipment and Supplies	Equipment Rental	N/A	N/A	PO Box 7797 Fresno 93747				
San Joaquin Chemical	Chemical Treatment	N/A	N/A					
San Joaquin Glass	Glass/Glazing	N/A	N/A	Fresno				
Seal Rite Paving/Wilbro, Inc.	General Engineering	N/A	N/A	959 Clovis Ave Clovis 93612	222-7325	325-0760	Brooke Ashjian	
Seals Biehle General Contractors	General Building	N/A	N/A	9410 W. Placer Visalia 93291				
Security Paving	General Engineering	N/A	N/A	PO Box 1488 Sun Valley 91353				
Serna Construction	General Engineering	31006	HISP/M	5019 E. Nevada Fresno 93727	252-5585	252-5124	Robert Serna	
Shelco	Toilet Partitions	N/A	N/A	Fresno				
Signal Technologies	Electrical	N/A	N/A					
SJD Construction, Inc.	Asphalt, concrete	7799	CAUC/F	PO Box 1301 Oakdale 95361	209-847-8939	209-847-0769	Sandra Cunningham	sidings@att.net
Smith Construction Co. Inc.	General Engineering	N/A	N/A	2139 N. Brawley Fresno 93705	233-1515	233-1551	Don Smith	
Spectratuf	Safety Surfacing	N/A	N/A	500 E. Rincon St. Corona				
Sterndahl Enterprise	Striping/Signs	N/A	N/A	11861 Branford St. Sun Valley 91352				
Steve Dovall Construction	General Engineering	N/A	N/A	8461 E. Olive Fresno 93727	255-7603	456-2843	Tim or Steve Dovall	
Stony Masonry	Masonry	N/A	N/A					
Strategic Mechanical	HVAC	N/A	N/A	4661 E. Commerce Fresno 93725				
Sudhakar Company	Striping	28984	ASIAN/M	1450 N. Fitzgerald Rialto 92376	909-879-2933		Ashok Sudhakar	

2007 - 2009 BIDDERS LIST CONTRACTOR SUMMARY 7-1-07 to 6-30-09

CONTRACTOR	WORK CATEGORY	DBE CERT. #	ETHNICITY/ GENDER	ADDRESS	PHONE	FAX	CONTACT	EMAIL
Summit Controls	EMS Controls	N/A	N/A					
Super Seal & Stripe	Striping	2003	CAUC/F	PO Box 755 Fillmore 93016	805-524-7345		Brenda Ortiz	
Superior Stucco	Stucco	N/A	N/A	Sanger				
T & T Pavement Markings	Striping	N/A	N/A	Fresno				
T.P. Thomas	Plumbing	N/A	N/A	Dinuba				
Tarlton & Sons	Plaster	N/A	N/A	Fresno				
TBI Roofing	Roofing	N/A	N/A	Loomis				
Teichert Construction	General Engineering	N/A	N/A	13281 Golden State Blvd. Kingsburg 93631				
Tennison Electric	Traffic Loops	N/A	N/A	15701 Heron Ave. Lamirada 90638	714-228-9631	714-228-9635	Timothy Erno	
Terno, Inc.	Electrical	N/A	N/A	3600 51st Ave. Sacramento 95823	916-375-8400	916-395-8429	Mike Weldon	
TNT Industrial Contractors, Inc.	HVAC	N/A	N/A	Visalia				
Todd Plumbing	Plumbing	N/A	N/A	1915 W. Ball Rd. Anaheim 92804	714-520-4026		Pete Nguyen	
Traffic Loop Crackfilling	Traffic Loops	12886	ASIAN/M	5595 N. Golden State Fresno				
Trane	HVAC	N/A	N/A					
Tri Counties Roofing	Roofing	N/A	N/A				Darin Oliver	
Tri County Grading and Paving, Inc.	General Engineering	N/A	N/A	95 W. Shaw, #101 Clovis 93612	291-5700	324-9576	Ron Donaldson	
Tron Construction	General Building	N/A	N/A	2845 N. Maroa Fresno 93704	229-7992	229-4947	John Valentino	
Truxell & Valentino	Landscape, Irrigation	N/A	N/A	Fresno				
Turnipseed Electrical	Electrical	N/A	N/A					
USA Shade	Shade Structures	N/A	N/A					
V & G Builders	Concrete	N/A	N/A	4724 W. Roberts Fresno 93722				
Valley Fence	Fencing	N/A	N/A	292 Herndon Clovis				
Valley Glass	Glass/Glazing	N/A	N/A					
Valley Insulation	Insulation	N/A	N/A	PO Box 1980 Clovis 93613				
Valley Slurry Seal	Slurry Seal	N/A	N/A					
Victory Engineers, Inc.	General Engineering	N/A	N/A	575 E. Alvarado Suite 106 Fresno 93720	439-7700	439-7700	Jonathan Reid	
W. G. Evans	Lockers	N/A	N/A	Roseville, CA				
WC Maloney	Demolition	N/A	N/A	Stockton				
Welco Engineering, Inc.	Directional Boring	N/A	N/A	Roseville, CA				
West Star	Storage Tanks	N/A	N/A	Fresno				
West Valley Construction Co. Inc.	Underground	N/A	N/A	580 McGlinchy Lane Campbell 95008	408-371-5510	408-371-3604	Dennis Poncato	
Western Building Materials	Acoustical	N/A	N/A					
Western Landscape	Landscape, Irrigation	N/A	N/A	2025 N. Gateway Fresno				

2007 - 2009 BIDDERS LIST CONTRACTOR SUMMARY 7-1-07 to 6-30-09

CONTRACTOR	WORK CATEGORY	DBE CERT #	ETHNICITY/ GENDER	ADDRESS	PHONE	FAX	CONTACT	EMAIL
Williams Excavation	Demolition	N/A	N/A	Fresno				
Wm. B. Saleh	Painting	N/A	N/A					
WTB Trucking	Trucking	N/A	N/A	7093 W. Belmont Fresno 93723				
Yarb's Enterprise	General Engineering	N/A	N/A	11339 S. Peach Fresno 93725	285-0743	834-5613	Troy Yarbrough	
				As of 5/1/09 233 Bidders, 2005 1410857				
				DBE Percentage 26.23% 16%		11.16%		
				WDB Percentage 17.23% 7.37%		7.30%		

CITY OF FRESNO 2009 - 2010 AADPL METHODOLOGY

NAICS CODE	237xxx - HEAVY AND CIVIL ENGINEERING CONSTRUCTION TOTAL ESTABLISHMENTS FROM CENSUS DATA	238xxx - SPECIALTY TRADE CONTRACTORS TOTAL ESTABLISHMENTS FROM CENSUS DATA	541xxx - ARCHITECTURAL, ENGINEERING AND RELATED SERVICES FROM CENSUS DATA	TOTAL ESTABLISHMENTS FROM CENSUS DATA
MADERA	18	212	19	249
FRESNO	115	1058	211	1384
KINGS	13	86	14	113
MERCED	22	212	8	242
TULARE	49	434	73	556
KERN	88	916	228	1232
TOTALS	305	2918	553	3776

104 DBE WILLING TO WORK IN DISTRICT 6 AND STATEWIDE IN MARKET AREA FROM CUCP DATA BASE IN APPLICABLE NAICS CODES

63 UDBE WILLING TO WORK IN DISTRICT 6 AND STATEWIDE IN MARKET AREA FROM CUCP DATA BASE IN APPLICABLE NAICS CODES

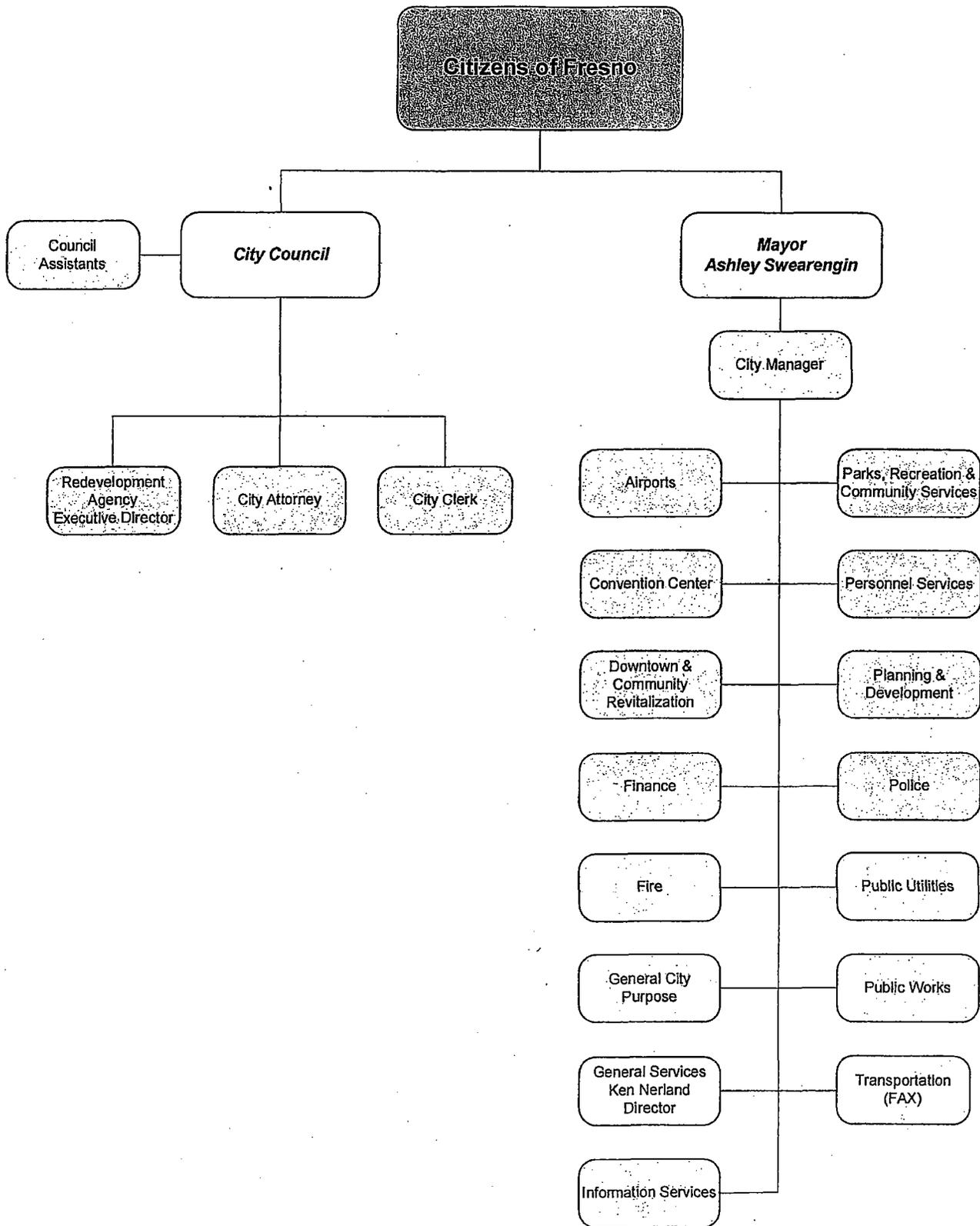
TOTAL DBE/UDBE	104
TOTAL UDBE ONLY	63
TOTAL DBE ONLY	41
TOTAL ESTABLISHMENTS	3776

CITY OF FRESNO 2009 - 2010 AADPL METHODOLOGY

TOTAL ESTABLISHMENTS IN MARKET AREA	237xxx HEAVY AND CIVIL ENGINEERING CONSTRUCTION TOTAL ESTABLISHMENTS FROM CENSUS DATA BASE 305	238xxx SPECIALTY TRADE CONTRACTORS TOTAL ESTABLISHMENTS FROM CENSUS DATA BASE 2918	541xxx ARCHITECTURAL ENGINEERING AND RELATED SERVICES FROM CENSUS DATABASE 553	TOTALS	3776
TOTAL UDBE FIRMS LOCATED/WORKING IN MARKET AREA	12	29	22		63
TOTAL DBE FIRMS LOCATED/WORKING IN MARKET AREA - DBE ONLY, NO UDBE	7	27	7		41
TOTAL DBE FIRMS LOCATED/WORKING IN MARKET AREA INCLUDES UDBE FIRMS	19	56	29		104

WEIGHT	65.77%	33.62%	0.61%		100.00%
237xxx NAICS CODE TOTALS FOR WEIGHT	\$ 13,984,112.63	65.768%			
238xxx NAICS CODE TOTALS FOR WEIGHT	\$ 7,147,926.39	33.617%			
54xxx NAICS CODE TOTALS FOR WEIGHT	\$ 130,600.00	0.614%			
	\$ 21,262,639.02	100.000%			

RACE CONSCIOUS GOAL	2.59%	0.33%	0.02%	2.95%
	(12/305)x65.77% = 2.59%	(29/2918)x33.62% = .33%	(22/553)x.61% = .02%	2.59+.33+.02 = 2.95%
RACE NEUTRAL GOAL	1.51%	0.31%	0.01%	1.83%
	(7/505)x65.77% = 1.51%	(27/2918)x33.62% = .33%	(7/553)x.61% = .01%	1.51+.33+.01 = 1.83%
TOTAL DBE/UDBE FIRMS AADPL OVERALL GOAL				2.95% + 1.83% = 4.78%



January 27, 2010

Copy of 2005 Fresno Bee's Publication is included-for your information -- Thanks)

TO: THE FRESNO BEE
ATTENTION JESSE - LEGAL. 441-6115, Fax: 495-6825

FROM: Beth McDonell. City of Fresno, DBE Program, 621-1182 Fax 488-1069

To be published: Wednesday, February 3, 2010.

Please provide Proof, Price Quote
After publication, please provide "Proof of Publication"

Bill to: City of Fresno - DBE Program, 2101 G Street, Bldg A, Fresno, CA 93726

NOTICE ANNOUNCING CITY OF FRESNO DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM GOALS FOR 2009-2010 IN U.S. DEPARTMENT OF TRANSPORTATION (DOT)
ASSISTED CONTRACTS

The City of Fresno is announcing overall goals for Disadvantaged Business Enterprise (DBE) participation for projects financed in part or in whole by the U.S. Department of Transportation (DOT). The goal for the Federal Highway Administration (FHWA) is 11%, Federal Aviation Administration (FAA) is 7%, and Federal Transit Administration (FTA) is 4% for 2009-2010 Federal Fiscal Year.

The rationale for the proposed goals is available for inspection during normal business hours at the City of Fresno General Services Department, Purchasing Division, 2101 "G" Street, for 30 days following the date of this notice. The City and U.S. Department of Transportation will accept comments on the goals for 45 days from the date of this notice.

Comments may be sent to:

City of Fresno
Purchasing Division
Disadvantaged Business Enterprise (DBE) Program
2101 "G" Street Building A
Fresno CA 93706

The United States Department of Transportation
Western Pacific Region WPC
15000 Aviation Blvd Room 2008
Lawndale CA 90261

Comments are for Informational Purposes Only
Date of publication: February 3, 2010

Attachment 5

California Department of Transportation
Disadvantaged Business Enterprise Implementation Agreement for
Local Agencies

CALIFORNIA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE IMPLEMENTATION AGREEMENT

For the CITY OF FRESNO, hereinafter referred to as "RECIPIENT."

I Definition of Terms

The terms used in this agreement have the meanings defined in 49 CFR § 26.5.

II OBJECTIVE/POLICY STATEMENT (§26/1. 26/23)

The RECIPIENT intends to receive federal financial assistance from the U. S. Department of Transportation (DOT) through the California Department of Transportation (Caltrans), and as a condition of receiving this assistance, the RECIPIENT will sign the California Department of Transportation Disadvantaged Business Enterprise Program Implementation Agreement (hereinafter referred to as Agreement). The RECIPIENT agrees to implement the State of California, Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan (hereinafter referred to as the DBE Program Plan) as it pertains to local agencies. The DBE Program Plan is based on U.S. Department of Transportation (DOT), 49 CFR, Part 26 requirements.

It is the policy of the RECIPIENT to ensure that DBEs, as defined in Part 26, have an equal opportunity to receive and participate in DOT-assisted contracts. It is also their policy:

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

III Nondiscrimination (§26.7)

RECIPIENT 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 the local agency components of the DBE Program Plan, the RECIPIENT will not, directly, or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the DBE Program Plan with respect to individuals of a particular race, color, sex, or national origin.

March 4, 2009

IV Annual DBE Submittal Form (§26.21)

The RECIPIENT will provide to the Caltrans District Local Assistance Engineer (DLAE) a completed *Local Agency DBE Annual Submittal Form* (Exhibit 9-B) by June 1 of each year for the following Federal Fiscal Year (FFY). This form includes an Annual Anticipated DBE Participation Level (AADPL), methodology for establishing the AADPL, the name, phone number, and electronic mailing address of the designated DBELO, and the choice of Prompt Pay Provision to be used by the RECIPIENT for the following FFY.

V Race-Neutral Means of Meeting the Overall Statewide Annual DBE Goal (§26.51)

RECIPIENT must meet the maximum feasible portion of its AADPL by using race-neutral means of facilitating DBE participation. 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).

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 DBE, and other small businesses, participation (e.g., unbundling large contracts to make them more accessible to small businesses, requiring or encouraging prime contractors to subcontract portions of work that they might otherwise perform with their own forces);
2. Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
3. Providing technical assistance and other services;
4. Carrying out information and communication programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists of 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 types of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
7. Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
8. Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
9. Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

VI Race Conscious Means of Meeting the Overall Statewide Annual DBE Goal (§26.51(d))

RECIPIENT must establish contract goals for Underutilized Disadvantaged Business Enterprises (UDBEs) to meet any portion of your AADPL you do not project being able to meet using race-neutral means. UDBEs are limited to these certified DBEs that are owned and controlled by African Americans, Native Americans, Women, and Asian Pacific Americans.

VII Quotas (§26.43)

RECIPIENT will not use quotas or set-asides in any way in the administration of the local agency component of the DBE Program Plan.

VIII DBE Liaison Officer (DBELO) (§26.25)

RECIPIENT has designated a DBE Liaison Officer. The DBELO is responsible for implementing the DBE Program Plan, as it pertains to the RECIPIENT, and ensures that the RECIPIENT is fully and properly advised concerning DBE Program Plan matters. The DBELO has staff of one support personnel who devotes their time to the DBE Program on a full-time basis. The name, address, telephone number, electronic mail address, and an organization chart displaying the DBELO's position in the organization are found in Attachment 1 to this Agreement. This information will be updated annually and included on the DBE Annual Submittal Form.

The DBELO is responsible for developing, implementing, and monitoring the RECIPIENT's requirements of the DBE Program Plan in coordination with other appropriate officials. Duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to determine projected Annual Anticipated DBE Participation Level.
4. Ensures that bid notices and requests for proposals are made available to DBEs in a timely manner.
5. Analyzes DBE participation and identifies ways to encourage participation through race-neutral means.
6. Participates in pre-bid meetings.
7. Advises the CEO/governing body on DBE matters and DBE race-neutral issues.
8. Provides DBEs with information and recommends sources to assist in preparing bids, obtaining bonding and insurance.
9. Plans and participates in DBE training seminars.
10. Provides outreach to DBEs and community organizations to fully advise them of contracting opportunities.

IX Federal Financial Assistance Agreement Assurance (§26.13)

RECIPIENT will sign the following assurance, applicable to and to be included in all DOT-assisted contracts and their administration, as part of the program supplement agreement for each project.

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract, or in the administration of its DBE Program, or the requirements 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 sanctions 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.). [Note – this language is to be used verbatim, as it is stated in §26.13(a).]

X DBE Financial Institutions (§26.27)

It is the policy of the RECIPIENT 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 contracts to make use of these institutions.

Information on the availability of such institutions can be obtained from the DBELO. The Caltrans' Disadvantaged Business Enterprise Program may offer assistance to the DBELO.

XI Directory (§26.31)

RECIPIENT will refer interested persons to the Unified Certification Program DBE directory available from the Caltrans Disadvantaged Business Enterprise Program's website at www.dot.ca.gov/hq/bep.

XII Required Contract Clauses (§§26.13, 26.29)

RECIPIENT ensures that the following clauses or equivalent will be included in each DOT-assisted prime contract:

A. CONTRACT ASSURANCE

The contractor 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 recipient deems appropriate.

[Note – This language is to be used verbatim, as is stated in §26.13(b). See Caltrans Sample Boiler Plate Contract Documents on the Internet at www.dot.ca.gov/hq/LocalPrograms under "Publications."]

B. PROMPT PAYMENT

Prompt Progress Payment to Subcontractors

The local agency shall require contractors and subcontractors to be timely paid as set forth in Section 7108.5 of the California Business and Professions Code concerning prompt payment to subcontractors. The 10-days is applicable unless a longer period is agreed to in writing. Any delay or postponement of payment over 30 days may take place only for good cause and with the agency's prior written approval. Any violation of Section 7108.5 shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies of that Section. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Prompt Payment of Withheld Funds to Subcontractors

The local agency shall ensure prompt and full payment of retainage from the prime contractor to the subcontractor within thirty (30) days after the subcontractor's work is satisfactorily completed and accepted. This shall be accompanied by including either (1), (2), or (3) of the following provisions [local agency equivalent will need Caltrans approval] in their federal-aid contracts to ensure prompt and full payment of retainage [withheld funds] to subcontractors in compliance with 49 CFR 26.29.

1. No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

2. No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

3. The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance; and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

XIII Local Assistance Procedures Manual

The RECIPIENT will advertise, award and administer DOT-assisted contracts in accordance with the most current published Local Assistance Procedures Manual (LAPM).

XIV Transit Vehicle Manufacturers (§ 26.49)

If FTA-assisted contracts will include transit vehicle procurements, RECIPIENT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on transit vehicle procurements, to certify that it has complied with the requirements of 49 CFR Part 26, Section 49.

XV Bidders List (§26.11(c))

The RECIPIENT will create and maintain a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote on its DOT-assisted contracts. The bidders list will include the name, address, DBE/nonDBE status, age, and annual gross receipts of the firm.

XVI Reporting to the DLAE

RECIPIENT will promptly submit a copy of the Local Agency Bidder/Proposer-UDBE Commitment (Consultant Contract), (Exhibit 10-O(1) "Local Agency Bidder/Proposer-DBE Commitment (Consultant Contract)") or Exhibit 15-G(1) "Local Agency Bidder-UDBE Commitment (Construction Contract) to the DLAE at the time of award of the consultant or construction contracts.

RECIPIENT will promptly submit a copy of the Local Agency Bidder-DBE Information (Exhibit 15-G(2) "Local Agency Bidder-DBE (Construction Contracts) – Information" or Exhibit 10-O(2) "Local Agency Proposer/Bidder-DBE (Consultant Contracts)-Information" of the LAPM) to the DLAE at the time of execution of consultant or construction contract.

RECIPIENT will promptly submit a copy of the Final Utilization of DBE participation to the DLAE using Exhibit 17-F "Final Report – Utilization of Disadvantaged Business Enterprises (DBE), First-Tier Subcontractors" of the LAPM immediately upon completion of the contract for each consultant or construction contract.

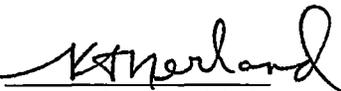
XVII Certification (§26.83(a))

RECIPIENT ensures that only DBE firms currently certified by the California Unified Certification Program will participate as DBEs on DOT-assisted contracts.

XVIII Confidentiality

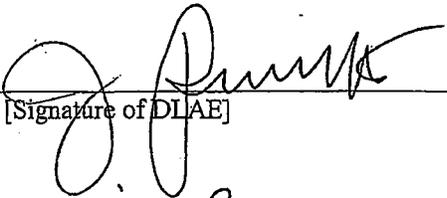
RECIPIENT will safeguard from disclosure to third parties, information that may reasonably be regarded as confidential business information consistent with federal, state, and local laws.

The City has determined that the above Addendum is necessary to conform with requirements for FHWA (Caltrans) funded projects and, therefore, is non-discretionary. In all other regards the City DBE Program shall remain in full force and effect.

By: 
Ken Nerland, DBELO, City of Fresno
gm

Date: 5/15/09

This California Department of Transportation's Disadvantaged Business Enterprise Program Implementation Agreement is accepted by:


[Signature of DLAE]

Date: 6/2/09

Jim Perreault
[Print Name of DLAE]

ATTACHMENT 1

CALIFORNIA
DEPARTMENT OF TRANSPORTATION
DISADVANTAGED BUSINESS ENTERPRISE
PROGRAM
IMPLEMENTATION AGREEMENT
FOR
LOCAL AGENCIES

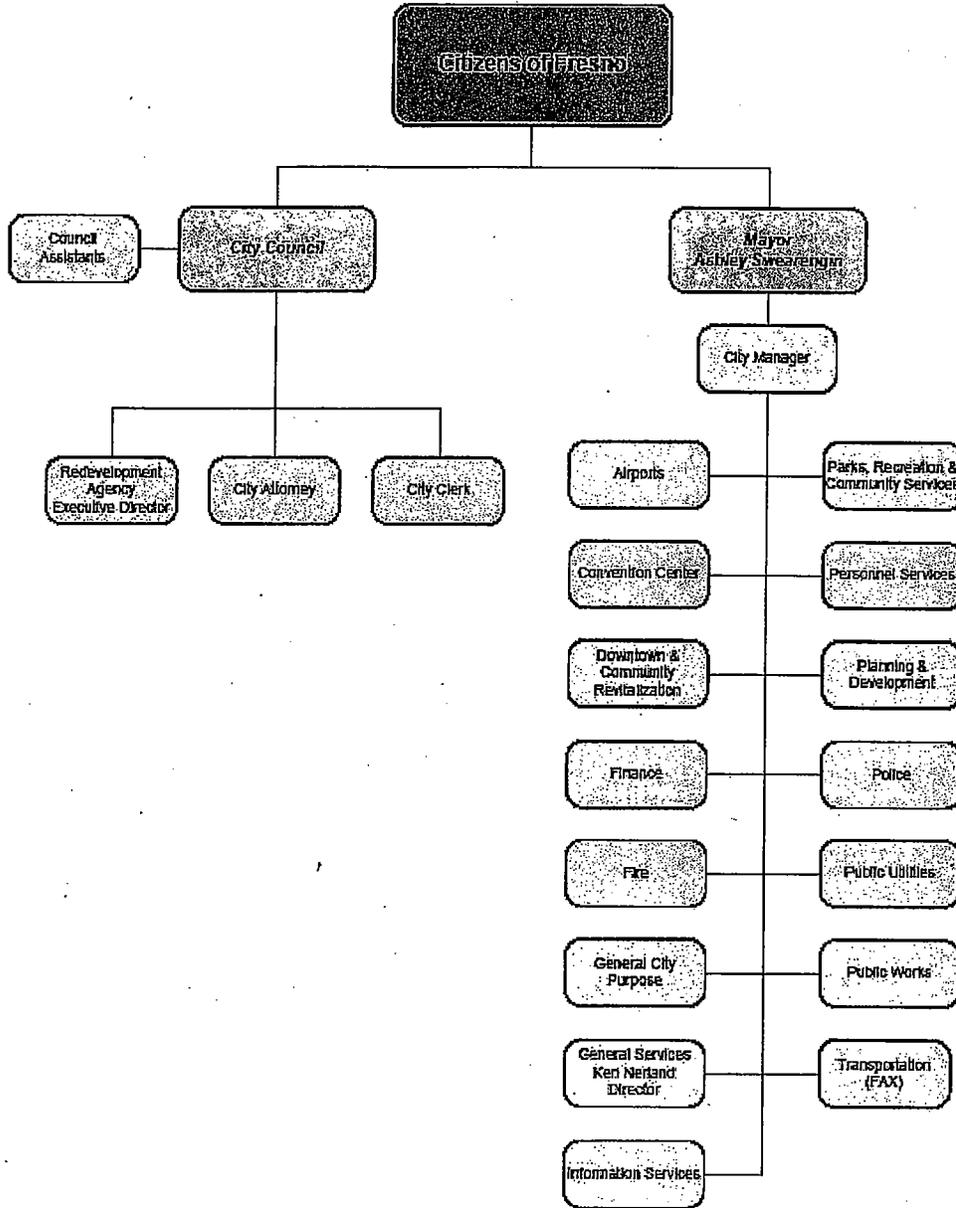
Exhibit 9-A VIII DBE Liaison Officer (DBELO) (§26.25)

Ken Nerland is designated as the Disadvantaged Business Enterprise Liaison Officer (DBELO) for the City of Fresno.

Beth McDonell, DBE Program Coordinator is designated as the DBELO staff and point of contact for the City of Fresno's DBE program.

Beth McDonell, DBELO staff and DBE Program Coordinator
2101 "G" Street, Building A
Fresno, CA 93706
559-621-1182
Beth.McDonell@fresno.gov

Organization Chart



INTERIM EXHIBIT 9-B LOCAL AGENCY DBE ANNUAL SUBMITTAL FORM

TO: CALTRANS DISTRICT 06
District Local Assistance Engineer

The information for exhibit 9-B presented herein, in accordance with Title 49 of the Code of Federal Regulations (CFR), Part 26, and the State of California Department of Transportation Disadvantaged Business Enterprise (DBE) Program Plan.

The City of Fresno submits our annual 9-B information for the Federal Fiscal Year 2010 /2011, beginning on October 1, 2011 and ending on September 30, 2012.

Disadvantaged Business Enterprise Liaison Officer (DBELO)

The City of Fresno has designated Joe Gray, Director, Finance Department, as the DBE Liaison Officer for the City of Fresno. In that capacity, the Director is responsible for implementing all aspects of the DBE program and ensuring that the City of Fresno complies with all provisions of 49 CFR Part 26. The Director has direct access to the City Council and the City Manager concerning DBE program matters. The DBELO has a professional staff of one assigned to the DBE program and the point of contact for the DBE Program is: Beth McDonell, DBE Program Coordinator for the City of Fresno. The address of the DBE Program is 2101 "G" Street, Building A, Fresno, CA 93706, phone number 559-621-1182, email: Beth.McDonell@fresno.gov. An organization chart displaying the DBELO's position in the organization is found in Attachment B to this program.

Planned Race Neutral Measures

The City of Fresno has a very assertive outreach program not only related to DBE firms, but also to local, small businesses. The City of Fresno is a member of the San Joaquin Small Business Council; we host training sessions on how to become certified as a DBE and as a small business; we participate in community outreach events such as the Procurement Fairs, Blue Book of Construction Showcase; Central California Hispanic Chamber of Commerce Business Expos, Calmentor A&E fairs; and Business Matchmaking Events.

We attend various Chambers of Commerce meetings such as the San Joaquin Valley Black Chamber of Commerce, Central California Black Chamber of Commerce, Fresno Area Hispanic Chamber of Commerce, and other community organizations such as the National Association of Women in Construction.

The City of Fresno is a certifying agency for Disadvantaged Business firms in partnership with Caltrans and other certifying agencies. We hold mandatory pre-bid meetings when applicable, we also attend Caltrans mandatory pre-bid meetings to provide information to potential DBE firms who would like to become certified.

The City of Fresno works in partnership with the Small Business Development Center, SCORE and the Asian Business Incubator and Resource Center providing referrals and training on how to do business with the City of Fresno. The City of Fresno has an on-line procurement system in which small and disadvantaged businesses can download plans and specifications at no cost; we are also in

partnership with the Central California Builder's Exchange who partners with other statewide plan rooms providing the opportunity for small and disadvantaged businesses throughout the State of California to view our plans and specifications.

The City of Fresno will also utilize the Race Neutral means as outlined under Section V of the California Department of Transportation Race-Conscious DBE Program Implementation Agreement for Local Agencies

Prompt Pay

Federal regulation (49 CFR 26.29) requires one of three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

The City of Fresno will use Method #3 in our procurement/payment process, as indicated in Attachment A.

Prompt Pay Enforcement Mechanism

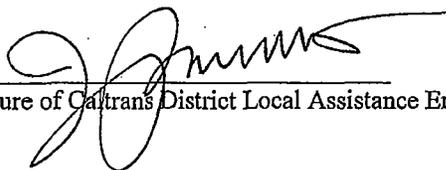
49 CFR, Part 26.29(d) requires providing appropriate means to enforce prompt payment. These means may include appropriate penalties for failure to comply with the terms and conditions of the contract. The means may also provide that any delay or postponement of payment among the parties may take place only for good cause with the local agency's prior written approval. The City of Fresno will monitor payments to all subcontractors, including DBE's, through our Construction Management Division as part of the inspection and progress payment process. See Attachment B.


(Signature)

7/27/11
Date

Joe Gray
Director, Finance Department
City of Fresno

559-621-1182
Phone Number


(Signature of Caltrans District Local Assistance Engineer [DLAE])

1/11/12
Date

Attachment A

Prompt Payment of Withheld Funds to Subcontractors

Federal regulation (49 CFR 26.29) requires one of the following three methods be used in federal-aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

- Method 1:** No retainage will be held by the agency from progress payments due to the prime contractor. Prime contractors and subcontractors are prohibited from holding retainage from subcontractors. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- Method 2:** No retainage will be held by the agency from progress payments due the prime contractor. Any retainage kept by the prime contractor or by a subcontractor must be paid in full to the earning subcontractor in 30 days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating contractor or subcontractor to the penalties, sanctions, and remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies, otherwise available to the contractor or subcontractor in the event of a dispute involving late payment or nonpayment by the contractor, deficient subcontractor performance, and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.
- Method 3:** The agency shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the agency of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the agency. Any delay or postponement of payment may take place only for good cause and with the agency's prior written approval. Any violation of these provisions shall subject the violating prime contractor to the penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code. This requirement shall not be construed to limit or impair any contractual, administrative, or judicial remedies otherwise available to the contractor or subcontractor in the event of: a dispute involving late payment or nonpayment by the contractor; deficient subcontractor performance and/or noncompliance by a subcontractor. This clause applies to both DBE and non-DBE subcontractors.

Distribution: (1) Original - DLAE
(2) Signed copy by the DLAE -- Local Agency

DBE Annual Submittal Form (07/ 1/10)

Attachment B

October 7, 2011

CITY OF FRESNO

Construction Management Division Procedure for Prompt Payment Enforcement Mechanism of Withheld Funds to Subcontractors

(Federal regulation 49 CFR 26.29) requires federal- aid contracts to ensure prompt and full payment of any retainage kept by the prime contractor or subcontractor to a subcontractor.

The City of Fresno shall hold retainage from the prime contractor and shall make prompt and regular incremental acceptances of portions, as determined by the City of the contract work and pay retainage to the prime contractor based on these acceptances. The prime contractor or subcontractor shall return all monies withheld in retention from all subcontractors within 30 days after receiving payment for work satisfactorily completed and accepted including incremental acceptances of portions of the contract work by the city. (Federal regulation 49 CFR 26.29 Method 3)

The following procedures will be used to comply with Method 3;

- At pre-bid meetings - The DBE Coordinator will point out the requirements for prompt payment under the federal requirements. Successful bidder will provide a list of all subcontractors to be used under the contract and a full description of subcontracted work.
- At the pre-construction meeting- The project Inspector will require the above list to be provided as a submittal along with a project schedule that identifies any of the subcontractors which may have their work completed/accepted prior to the completion of the entire project.
- During construction-When a progress payment is prepared, the inspector will review the schedule and the actual completed work to date and determine if there is any subcontractor which has completed 100% of their contract.
- If no subcontractor has completed 100% of their contract, the review which has taken place is documented for that payment.
- If there is a subcontractor which has completed 100% of their contract, staff will contact the prime contractor and verify that the subcontractor has completed 100% of his work.
- If the prime contractor agrees that the subcontractor's work is complete, a letter of acceptance for that subcontractor's portion of work will be sent, (letter to prime & sub), and the payment will be processed releasing retention for that portion of the work. If the prime contractor disagrees, the remaining work is documented and no release is included for that payment.

- After a release of retention for incremental acceptance, staff will contact the subcontractor to verify payment to the subcontractor within 30 days after City payment to the prime. Documentation of verification of payment will be filed. If prompt payment has not been made the City will notify the prime contractor and will proceed with penalties, sanctions, and other remedies specified in Section 7108.5 of the California Business and Professions Code.

Attachment 6

Breakout of Estimated Race-Neutral & Race-Conscious Participation

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

- Attending outreach events sponsored by the various Chambers of Commerce;
- Conducting workshops on how to become certified as a DBE;
- Holding pre-bid meetings to provide maximum opportunity for DBEs and other small businesses to interact with general contractors;
- Breaking larger projects into smaller projects so DBEs and other small businesses can participate; and
- Assisting with bonding and insurance.

We estimate that, in meeting our overall goal of 2.0% for FTA-assisted contracts, we will obtain 2.0% participation from race-neutral measures and 0.0% through race-conscious measures. Contract goals and race-conscious measures are not required by FTA at this time.

We estimate that, in meeting our overall goal of 4.0% for FAA-assisted contracts, we will obtain 4.0% participation from race-neutral measures and 0.0% through race-conscious measures. Contract goals and race-conscious measures are not required by FAA at this time.

We estimate that, in meeting our overall goal of 11.0% for FHWA-assisted contracts (i.e., the AADPL through Caltrans), we will obtain 4.0% participation from race-neutral measures and 7.0% UDBE participation through race-conscious measures.

The following is a summary of the basis of our estimated breakout of race-neutral and race-conscious UDBE participation: see attachment 4-3 to attachment 4 of the DBE Program.

In order to ensure that the City of Fresno's DBE Program will be narrowly tailored to overcome the effects of discrimination, if the City of Fresno uses contract goals it will adjust the estimated breakout of race-neutral and race-conscious participation as needed to reflect actual DBE participation (see part 26, § 26.51(f)) and the City of Fresno will track and report race-neutral and race-conscious participation separately. For reporting purposes, race-neutral DBE participation includes, but is not necessarily limited to, the following:

-
- DBE participation through a prime contract a DBE obtains through customary competitive procurement procedures;
 - DBE participation through a subcontract on a prime contract that does not carry DBE goal;
 - DBE participation on a prime contract exceeding a contract goal; and
 - DBE participation through a subcontract from a prime contractor that did not consider a firm's DBE status in making the award.

The City of Fresno will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively.

Attachment 7

Forms Required to Demonstrate Commitment and Good Faith Effort

Distribution: (1) Original – Local agency files

Page 15-31 LPP 09-02
July 31, 2009

ALL BIDDERS:

PLEASE NOTE: It is the Bidder's responsibility to verify that the UDBE(s) falls into one of the following groups in order to count towards the UDBE contract goal: 1) African Americans; 2) Asian-Pacific Americans; 3) Native Americans; 4) Women. This information may be submitted with the Bid Proposal. If it is not, and Bidder is the apparent low bidder or the second or third low bidder, it must be submitted and received as specified in these Specifications. Failure to submit the required UDBE commitment will be grounds for finding the proposal nonresponsive

UDBE is a firm meeting the definition of a DBE as specified in 49 CFR and is one of the following groups: African Americans, Asian-Pacific Americans, Native Americans, or Women.

The form requires specific information regarding the construction contract: Local Agency, Location, Project Description, Total Contract Amount, Bid Date, Bidder's Name, and Contract UDBE Goal.

The form has a column for the Contract Item Number and Item of Work and Description or Services to be Subcontracted or Materials to be provided by UDBE's. Prime contractors shall indicate all work to be performed by UDBEs including, if the prime is a UDBE, work performed by its own forces, if a UDBE. The UDBE shall provide a certification number to the Contractor and expiration date. Enter the UDBE prime's and subcontractors' certification numbers. The form has a column for the Names of UDBE contractors to perform the work (who must be certified on the date bids are opened and include the UDBE address and phone number).

IMPORTANT: Identify **all** UDBE firms participating in the project regardless of tier. Names of the First Tier UDBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the UDBE participation dollar amount. Enter the Total Claimed UDBE Participation dollars and percentage amount of items of work submitted with your bid pursuant to these Specifications. (If 100% of item is not to be performed or furnished by the UDBE, describe exact portion of time to be performed or furnished by the UDBE.) See Section "Disadvantaged Business Enterprise (DBE)," of these Specifications to determine how to count the participation of UDBE firms.

Form 15-G1 must be signed and dated by the person bidding. Also list a phone number in the space provided and print the name of the person to contact.

Local agencies should complete the Local Agency Contract Award, Federal-aid Project Number, Federal Share, Contract Award Date fields and verify that all information is complete and accurate before signing and filing.

FORM 15-H UDBE INFORMATION—GOOD FAITH EFFORTS (INSTRUCTIONS BELOW)

Federal-aid Project No. _____ Bid Opening Date _____

The _____ City of Fresno _____ established an Under-utilized Disadvantaged Business Enterprise (UDBE) goal of _____% for this project. The information provided herein shows that a good faith effort was made.

Lowest, second lowest and third lowest bidders shall submit the following information to document adequate good faith efforts. Bidders should submit the following information even if the “Local Agency Bidder – UDBE Commitment” form indicates that the bidder has met the UDBE goal. This will protect the bidder’s eligibility for award of the contract if the administering agency determines that the bidder failed to meet the goal for various reasons, e.g., a UDBE firm was not certified at bid opening, or the bidder made a mathematical error.

Submittal of only the “Local Agency Bidder – UDBE Commitment” form may not provide sufficient documentation to demonstrate that adequate good faith efforts were made.

The following items are listed in the Section entitled “Submission of UDBE Commitment” of the Specifications:

- A. The names and dates of each publication in which a request for UDBE participation for this project was placed by the bidder (please attach copies of advertisements or proofs of publication):

<u>Publications</u>	<u>Dates of Advertisement</u>

- B. The names and dates of written notices sent to certified UDBEs soliciting bids for this project and the dates and methods used for following up initial solicitations to determine with certainty whether the UDBEs were interested (please attach copies of solicitations, telephone records, fax confirmations, etc.):

<u>Names of UDBEs Solicited</u>	<u>Date of Initial Solicitation</u>	<u>Follow Up Methods and Dates</u>

C. The items of work which the bidder made available to UDBE firms, including, where appropriate, any breaking down of the contract work items (including those items normally performed by the bidder with its own forces) into economically feasible units to facilitate UDBE participation. It is the bidder's responsibility to demonstrate that sufficient work to facilitate UDBE participation was made available to UDBE firms.

Items of Work	Bidder Normally Performs Item (Y/N)	Breakdown of Items	Amount (\$)	Percentage Of Contract

D. The names, addresses and phone numbers of rejected UDBE firms, the reasons for the bidder's rejection of the UDBEs, the firms selected for that work (please attach copies of quotes from the firms involved), and the price difference for each UDBE if the selected firm is not a UDBE:

Names, addresses and phone numbers of rejected UDBEs and the reasons for the bidder's rejection of the UDBEs:

Names, addresses and phone numbers of firms selected for the work above:

E. Efforts made to assist interested UDBEs in obtaining bonding, lines of credit or insurance, and any technical assistance or information related to the plans, specifications and requirements for the work which was provided to UDBEs:

F. Efforts made to assist interested UDBEs in obtaining necessary equipment, supplies, materials, or related assistance or services, excluding supplies and equipment the UDBE subcontractor purchases or leases from the prime contractor or its affiliate:

G. The names of agencies, organizations or groups contacted to provide assistance in contacting, recruiting and using UDBE firms (please attach copies of requests to agencies and any responses received, i.e., lists, Internet page download, etc.):

Name of Agency/Organization	Method/Date of Contact	Results
<hr/>		
<hr/>		

H. Any additional data to support a demonstration of good faith efforts (use additional sheets if necessary):

NOTE: USE ADDITIONAL SHEETS OF PAPER IF NECESSARY.

Good Faith Efforts Submittal (Instructions)

The bidder shall complete and submit the "UDBE Information - Good Faith Efforts," Form 15-H, within three (3) working days of the bid opening showing that the bidder has made adequate good faith efforts to meet the goal. Only good faith efforts directed towards obtaining participation by UDBE's will be considered. If good faith efforts documentation is not submitted with the bid, it must be received by the City no later than three working days from the date of the bid opening.

If the UDBE Commitment form shows that the bidder has met the UDBE goal or if the bidders are required to submit the UDBE Commitment form, the bidder must also submit good faith efforts documentation within the specified time to protect the bidder's eligibility for award of the contract in the event the City finds that the UDBE goal has not been met.

Good faith efforts documentation must include the following information and supporting documents, as necessary:

1. Items of work the bidder has made available to UDBE firms. Identify those items of work the bidder might otherwise perform with its own forces and those items that have been broken down into economically feasible units to facilitate UDBE participation. For each item listed, show the dollar value and percentage of the total contract. It is the bidder's responsibility to demonstrate that sufficient work to meet the goal was made available to UDBE firms.
2. Names of certified UDBE's and dates on which they were solicited to bid on the project. Include the items of work offered. Describe the methods used for following up initial solicitations to determine with certainty if the UDBE's were interested, and the dates of the follow-up. Attach supporting documents such as copies of letters, memos, facsimiles sent, telephone logs, telephone billing statements, and other evidence of solicitation. The bidder is reminded to solicit certified UDBE's through all reasonable and available means and provide sufficient time to allow UDBE's to respond.
3. Name of selected firm and its status as a UDBE for each item of work made available. Include name, address, and telephone number of each UDBE that provided a quote and their price quote. If the firm selected for the item is not a UDBE, provide the reasons for the selection.
4. Name and date of each publication in which the bidder requested UDBE participation for the project. Attach copies of the published advertisements.
5. Names of agencies and dates on which they were contacted to provide assistance in contacting, recruiting, and using UDBE firms. If the agencies were contacted in writing, provide copies of supporting documents.
6. List of efforts made to provide interested UDBE's with adequate information about the plans, specifications, and requirements of the contract to assist them in responding to a solicitation. If the bidder has provided information, identify the name of the UDBE assisted, the nature of the information provided, and date of contact. Provide copies of supporting documents, as appropriate.
7. List of efforts made to assist interested UDBE's in obtaining bonding, lines of credit, insurance, necessary equipment, supplies, and materials, excluding supplies and equipment that the UDBE subcontractor purchases or leases from the prime contractor or its affiliate. If such assistance is provided by the bidder, identify the name of the UDBE assisted, nature of the assistance offered, and date. Provide copies of supporting documents, as appropriate.
8. Any additional data to support demonstration of good faith efforts.

INSTRUCTIONS - LOCAL AGENCY BIDDER DBE INFORMATION (CONSTRUCTION CONTRACTS)

SUCCESSFUL BIDDER:

The form requires specific information regarding the construction contract: Local Agency, Location, Project Description, Total Contract Amount, Bid Date, Bidder's Name, and Contract UDBE Goal.

The form has a column for the Contract Item Number and Item of Work and Description or Services to be Subcontracted or Materials to be provided by DBE's. Prime contractors shall indicate all work to be performed by DBEs including work performed by its own forces, if a DBE. The DBE shall provide a certification number to the Contractor and expiration date. Enter DBE prime and subcontractors certification number. The DBE contractors should notify the Contractor in writing with the date of the decertification if their status should change during the course of the contract. The form has a column for the Names of DBE certified contractors to perform the work (must be certified on the date bids are opened and include DBE address and phone number).

IMPORTANT: Identify **all** DBE firms participating in the project--including all UDBE's listed on the UDBE Commitment form (Exhibit 15G1), regardless of tier. Names of the First Tier DBE Subcontractors and their respective item(s) of work listed should be consistent, where applicable, with the names and items of work in the "List of Subcontractors" submitted with your bid.

There is a column for the DBE participation dollar amount. Enter the Total Claimed DBE Participation dollars and percentage amount of items of work submitted with your bid pursuant to these Specifications. (If 100% of item is not to be performed or furnished by the DBE, describe exact portion of time to be performed or furnished by the DBE.) See Section "Disadvantaged Business Enterprise (DBE)" of these Specifications to determine how to count the participation of DBE firms.

Exhibit 15-G (2) must be signed and dated by the successful bidder. Also list a phone number in the space provided and print the name of the person to contact.

Local agencies should complete the Local Agency Contract Number, Federal-aid Project Number, Federal Share, Contract Award Date fields and verify that all information is complete and accurate before signing and sending a copy of the form to the District Local Assistance Engineer within 15 days of contract execution. Failure to submit a completed and accurate form within the 15-day time period may result in the de-obligation of funds on this project.

District DBE Coordinator should verify that all information is complete and accurate.

Once the information has been verified, the **District Local Assistance Engineer** signs and dates the form.

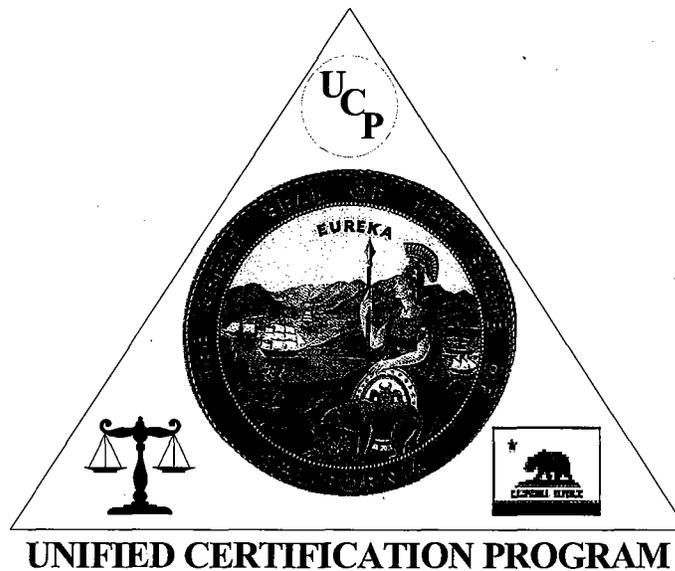
Attachment 8

Certification Application Form

CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)

DISADVANTAGED BUSINESS ENTERPRISE (DBE)

CERTIFICATION APPLICATION



To access the statewide CUCP DBE database, please log onto:

CALIFORNIAUCP.COM

CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)



Dear Business Owner:

Thank you for your interest in participating in the California Unified Certification Program (CUCP) for Disadvantaged Business Enterprises (DBEs). As mandated by the United States Department of Transportation (U.S. DOT) in the DBE Program, Final Rule 49 Code of Federal Regulations (CFR), Part 26, all U.S. DOT recipients of federal financial assistance must participate in a statewide UCP by March 2002. The UCP is a "One-Stop Shopping" certification procedure that eliminates the need for DBE firms to obtain certifications from multiple agencies within the State.

The CUCP is charged with the responsibility of certifying firms and compiling and maintaining the Database of certified DBEs for U.S. DOT grantees in California, pursuant to 49 CFR Part 26. The Database is intended to expand the use of DBE firms by maintaining complete and current information on those businesses and the products and services they can provide to all grantees of California.

Please complete the attached application and supplemental questionnaire if you wish to be considered for DBE certification and your business meets the following general guidelines:

- a) The firm must be at least 51% owned by one or more socially and economically disadvantaged individuals.
- b) The firm must be an independent business, and one or more of the socially and economically disadvantaged owners must control its management and daily operations.
- c) Only existing for-profit "Small Business Concerns," as defined by the Small Business Act and Small Business Administration (SBA) regulations may be certified. DBE applicants are first subject to the applicable small business size standards of the SBA. Second, the average annual gross receipts for the firm (including its affiliates) over the previous three fiscal years must not exceed U.S. DOT's cap of \$22.41 million.
- d) The Personal Net Worth (PNW) of each socially and economically disadvantaged owner must not exceed \$1.32 million, excluding the individual's ownership interest in the applicant firm and the equity in his/her primary residence.

For firms applying for Airport Concession DBE certification: Please refer to the Airport Concessions Disadvantaged Business Enterprise (ACDBE) Certification Application for applicable average annual gross receipts and personal net worth dollar limitations.

Socially and economically disadvantaged individual means any individual who is a citizen of the United States (or lawfully admitted permanent resident) and who is a member of the following groups: Black American, Hispanic American, Native American, Asian-Pacific American, Subcontinent Asian American, or Women,

or

Any individual found to be socially and economically disadvantaged on a case-by-case basis by a certifying agency pursuant to the standards of the U.S. DOT 49 CFR Part 26.

In order to avoid unnecessary delays, please complete all portions of the application and supplemental questionnaire, placing "N/A" next to items that are not applicable. Include all copies of documents requested on the application, and have the *Affidavit of Certification* notarized. Additional documentation may be requested if it is considered necessary to make a certification determination. Incomplete applications/supplemental questionnaires or applications/supplemental questionnaires without all the required documents will not be evaluated until such documents are submitted. We recommend keeping a copy of all submitted documents for your records.

REMEMBER: It is no longer necessary to apply at more than one agency. If your firm meets the criteria for certification, it will be entered into the Database of DBEs for all U.S. DOT grantees in California. Only firms currently certified as eligible DBEs may participate in the DBE programs of U.S. DOT grantees of California. If you wish to be considered for Airport Concession DBE certification only, you will need to complete the Airport Concession DBE Certification Application Package, which can be accessed at www.CaliforniaUCP.com.

The CUCP has established two Regional DBE Certification Clusters throughout the State to effectively facilitate statewide DBE certification activities. Please forward your completed certification packet to **one** of the agencies serving the county where your firm has its principal place of business. (See enclosed Roster of Certifying Agencies.)

For Out-of-State Firms: The CUCP will not process a new application for DBE certification from a firm having its principal place of business in another state unless the firm has already been certified in that state. If your firm is located outside of California and is certified as a DBE in your home state, please forward your completed certification packet, along with a copy of your DBE certificate, to the California Department of Transportation. (See page 2 of the enclosed Roster of Certifying Agencies.)

CALIFORNIA UNIFIED
CERTIFICATION PROGRAM

**INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE)
PROGRAM UNIFORM CERTIFICATION APPLICATION**

NOTE: 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. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or whether any have ever been denied certification, decertified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e. the physical location of its offices -- not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.
- (4) State the date on which you and/or each other owner took ownership of the firm.
- (5) Check the appropriate box that describes 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."

NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

- (7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation. If you checked "Other," briefly explain in the space provided.
- (8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.
- (9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.
- (10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships 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, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.
- (2) Check the appropriate box that indicates whether at present, or at any time in the past:
 - (a) Your firm has been a subsidiary of any other firm;
 - (b) Your firm consisted of a partnership in which one or more of the partners are other firms;
 - (c) Your firm has owned any percentage of any other firm; and
 - (d) Your firm has had any subsidiaries of its own.
- (3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.
- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage

another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

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 additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). 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.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is 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. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) 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.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.
- (6) Check the appropriate box that indicates 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 title or function held in that business.

- (7) 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 and this owner's title or function held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e. for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your 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 of your firm.
- (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 that indicates whether any of your firm's officers and/or directors listed above perform 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. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

- (1) Making of financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
- (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
- (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf;

- (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
- (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
- (6) Office management;
- (7) Marketing and sales;
- (8) Purchasing of major equipment;
- (9) Signing company checks (for any purpose); and
- (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
- (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform 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.
- (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.

C. Indicate your firm's inventory in the following categories:

(1) Equipment

State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.

(2) Vehicles

State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.

(3) Office Space

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

(4) Storage Space

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

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," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial Information

(1) Banking Information

- (a) State the name of your firm's bank.
- (b) Give the main phone number of your firm's bank branch.

- (c) Give the address of your firm's bank branch.
- (2) Bonding Information**
 - (a) State your firm's Binder Number.
 - (b) State the name of your firm's bond agent and/or broker.
 - (c) Give your agent's/broker's phone number.
 - (d) Give your agent's/broker's address.
 - (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:

State the name and address of each source, the original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm.

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners 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. List 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 the license/permit number and issuing State of the license or permit.

I. List the three 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. List the three 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.

AFFIDAVIT & SIGNATURE

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.

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 C.F.R. PART 26**

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

① **Should I apply?**

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Does the disadvantaged owner's Personal Net Worth **not** exceed \$1.32 million (excluding the individual's ownership interest in the applicant firm and the equity in his/her primary residence)?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$22.41 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

③ **Where can I find more information?**

- U.S. DOT – <http://osdbuweb.dot.gov/DBEProgram/index.cfm> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.sba.gov/services/contractingopportunities/sizestandardsttopics/index.html> (provides listing of NAICS codes and Table of size standards)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Updated 5/11/2011

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, 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 49 CFR Part 29, take enforcement action under 49 CFR 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.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit? <input type="checkbox"/> Yes, on ___ / ___ / ___ State: _____ <input type="checkbox"/> No

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?
 Yes, on ___ / ___ / ___ No
 If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:			
(3) Phone #:	(4) Other Phone #:		(5) Fax #:		
(6) E-mail:		(7) Website <i>(if have one)</i> :			
(8) Street address of firm <i>(No P.O. Box)</i> :		City:	County/Parish:	State:	Zip:
(9) Mailing address of firm <i>(if different)</i> :		City:	County/Parish:	State:	Zip:

B. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID (if any):	
(3) This firm was established on ___ / ___ / ___		(4) I/We have owned this firm since: ___ / ___ / ___	
(5) Method of acquisition <i>(check all that apply)</i> : <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other <i>(explain)</i>			
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.	

(7) Type of firm (check all that apply):

Sole Proprietorship

Partnership

Corporation

Limited Liability Partnership

Limited Liability Corporation

Joint Venture

Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?

Yes No

If Yes, explain: _____

(9) Number of employees: Full-time _____ Part-time _____ Total _____

(10) Specify the gross receipts of the firm for the last 3 years: Year _____ Total receipts \$ _____

Year _____ Total receipts \$ _____

Year _____ Total receipts \$ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?

Yes No

If Yes, identify: Other Firm's name: _____

Explain nature of shared facilities: _____

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? Yes No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):

	<u>Name</u>	<u>Address</u>	<u>Type of Business</u>
1.			
2.			
3.			

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? Yes No

If Yes, then list (attach extra sheets, if needed):

	<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>
1.					
2.					

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below *(If more than one owner, attach separate sheets for each additional owner):*

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:			
(4) Home Address (<i>street and number</i>):			City:	State:	Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female		(6) Ethnic group membership (<i>Check all that apply</i>): <input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (<i>specify</i>) _____			
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No					
(8) Lawfully Admitted Permanent Resident: <input type="checkbox"/> Yes <input type="checkbox"/> No					

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	<u>Type</u>	<u>Dollar Value</u>
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock: <u>Number</u> <u>Percentage</u> <u>Class</u> <u>Date acquired</u> <u>Method Acquired</u>			
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business: _____ Function/Title: _____			
(7) Does this owner own or work for any other firm(s) that has a relationship with this firm (<i>e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.</i>)? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business: _____ Function/Title: _____			
Nature of Business Relationship: _____			

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e. for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? <i>(Use and attach the Personal Financial Statement form at the end of this application; attach additional sheets if more than one owner is applying)</i>
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain (<i>attach additional sheets if needed</i>):

Section 4: CONTROL

A. Identify your firm's Officers & 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)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? Yes No

If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) 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. Identify your firm's management personnel who control your firm in the following areas *(If more than two persons, attach a separate sheet):*

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			

(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			
(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify for each: Person: _____ Title: _____ Business: _____ Function: _____				
(12) Do any of the persons listed in (1) through (10) 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.)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify for each: Firm Name: _____ Person: _____ Nature of Business Relationship: _____				

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

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

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

If Yes, explain:

E. Financial Information

(1) **Banking Information:**
 (a) Name of bank: _____ (b) Phone No: () _____
 (c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) **Bonding Information:** If you have bonding capacity, identify: (a) Binder No: _____
 (b) Name of agent/broker _____ (c) Phone No: () _____
 (d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____
 (e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing 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 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	License Number and 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.					

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- Work experience resumes (that include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- Personal Financial Statement (form available with this application)
- Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- Your firm's tax returns (gross receipts) and all related schedules for the past three years
- Documented proof of contributions used to acquire ownership for each owner (*e.g. both sides of cancelled checks*)
- Your firm's signed loan agreements, security agreements, and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment leased and signed lease agreements
- List of construction equipment and/or vehicles owned and titles/proof of ownership
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits, and haul authority forms
- DBE certifications, denials, and/or decertifications, if applicable
- Bank authorization and signatory cards
- Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- Trust agreements held by any owner claiming disadvantaged status, if any

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
- 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)

Trucking Company

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required. (See Supplemental Document Checklist)

CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)



Supplemental Document Checklist

Firm Name: _____

In order to complete your application for DBE certification, you must also attach copies of all of the following documents:

- Documentation of Group Membership. Please comply with one of the following: (1) For each owner seeking social disadvantaged status on the basis of Ethnic membership, please provide a document (e.g., birth certificate, U.S. Passport, Green Card, parents' birth certificate, etc.) evidencing Ethnic heritage or similar document evidencing Ethnic community affiliation. (2) For each owner seeking social disadvantaged status on the basis of Gender, please provide a document evidencing gender (e.g., birth certificate, driver's license, etc.). (3) For each owner seeking an individual showing of social disadvantage, please provide documents you deem appropriate for consideration.
- Documentation of U.S. citizenship or lawful permanent residence, e.g., U.S. birth certificate, Green Card, etc.

Supplemental Questionnaire

1. Is the firm's principal place of business in California? Yes _____ No _____

If no, please include a copy of the firm's DBE certificate issued in its home state. (The CUCP will not process a new application for DBE certification from a firm having its principal place of business in another state unless the firm has already been certified in that state.)

2. Is the firm authorized to do business in the State of California? Yes _____ No _____

3. List all office locations in California: _____

4. Has the firm ever done business with any U.S. DOT Grantees of California? Yes _____ No _____

If yes, please indicate the agency name(s) and latest year(s):

Agency	Latest Year

Agency	Latest Year

5. Is there an upcoming project in which the firm is interested and therefore, would need to be certified prior to a specific date in order to be counted toward DBE participation? Yes _____ No _____

If yes, please provide the following information:

Agency letting contract: _____

Contract Number and Name: _____ Bid Opening date or Request for Proposal due date: _____

6. Indicate areas where you prefer to do your work.

- | | | | | | |
|--|---|---------------------------------------|---|---|--------------------------------------|
| <input type="checkbox"/> 01 Alameda | <input type="checkbox"/> 11 Glenn | <input type="checkbox"/> 21 Marin | <input type="checkbox"/> 31 Placer | <input type="checkbox"/> 41 San Mateo | <input type="checkbox"/> 51 Sutter |
| <input type="checkbox"/> 02 Alpine | <input type="checkbox"/> 12 Humboldt | <input type="checkbox"/> 22 Mariposa | <input type="checkbox"/> 32 Plumas | <input type="checkbox"/> 42 Santa Barbara | <input type="checkbox"/> 52 Tehama |
| <input type="checkbox"/> 03 Amador | <input type="checkbox"/> 13 Imperial | <input type="checkbox"/> 23 Mendocino | <input type="checkbox"/> 33 Riverside | <input type="checkbox"/> 43 Santa Clara | <input type="checkbox"/> 53 Trinity |
| <input type="checkbox"/> 04 Butte | <input type="checkbox"/> 14 Inyo | <input type="checkbox"/> 24 Merced | <input type="checkbox"/> 34 Sacramento | <input type="checkbox"/> 44 Santa Cruz | <input type="checkbox"/> 54 Tulare |
| <input type="checkbox"/> 05 Calaveras | <input type="checkbox"/> 15 Kern | <input type="checkbox"/> 25 Modoc | <input type="checkbox"/> 35 San Benito | <input type="checkbox"/> 45 Shasta | <input type="checkbox"/> 55 Tuolumne |
| <input type="checkbox"/> 06 Colusa | <input type="checkbox"/> 16 Kings | <input type="checkbox"/> 26 Mono | <input type="checkbox"/> 36 San Bernardino | <input type="checkbox"/> 46 Sierra | <input type="checkbox"/> 56 Ventura |
| <input type="checkbox"/> 07 Contra Costa | <input type="checkbox"/> 17 Lake | <input type="checkbox"/> 27 Monterey | <input type="checkbox"/> 37 San Diego | <input type="checkbox"/> 47 Siskiyou | <input type="checkbox"/> 57 Yolo |
| <input type="checkbox"/> 08 Del Norte | <input type="checkbox"/> 18 Lassen | <input type="checkbox"/> 28 Napa | <input type="checkbox"/> 38 San Francisco | <input type="checkbox"/> 48 Solano | <input type="checkbox"/> 58 Yuba |
| <input type="checkbox"/> 09 El Dorado | <input type="checkbox"/> 19 Los Angeles | <input type="checkbox"/> 29 Nevada | <input type="checkbox"/> 39 San Joaquin | <input type="checkbox"/> 49 Sonoma | |
| <input type="checkbox"/> 10 Fresno | <input type="checkbox"/> 20 Madera | <input type="checkbox"/> 30 Orange | <input type="checkbox"/> 40 San Luis Obispo | <input type="checkbox"/> 50 Stanislaus | |

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 applicant firm _____ (firm name) 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 or subcontract, 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 (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, 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 (DBE). 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	_____	Asian-Pacific American	_____
Native 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 \$1,320,000, 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.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE



**DISADVANTAGED BUSINESS ENTERPRISE (DBE) and
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)**

PERSONAL FINANCIAL STATEMENT

As of _____, _____

Complete this form for each individual whose ownership and control are relied upon for DBE or ACDBE certification.

Name(s):	Are these figures for a married couple? Yes ___ No ___
Residence Address:	Residence Phone:
City, State, & Zip Code:	
Business Name of Applicant:	Business Phone:

ASSETS	(Omit Cents)	LIABILITIES	(Omit Cents)
Cash on hand & in Banks.....	\$ _____	Accounts Payable.....	\$ _____
Savings/Other Cash Accounts.....	\$ _____	Notes Payable to Banks and Others.....	\$ _____
IRA or Other Retirement Accounts.....	\$ _____	(Describe in Section 2)	
Accounts & Notes Receivable.....	\$ _____	Installment Account (Auto).....	\$ _____
Life Insurance-Cash Surrender Value Only.....	\$ _____	Installment Account (Other).....	\$ _____
(Complete Section 7)		Loan on Life Insurance.....	\$ _____
Stocks and Bonds.....	\$ _____	Mortgages on Real Estate.....	\$ _____
Real Estate.....	\$ _____	(Describe in Section 3)	
(Describe in Section 3)		Unpaid Taxes.....	\$ _____
Automobile-Present Value.....	\$ _____	(Describe in Section 5)	
Other Personal Property.....	\$ _____	Other Liabilities.....	\$ _____
(Describe in Section 4)		(Describe in Section 6)	
Other Assets.....	\$ _____	Total	\$ _____
(Describe in Section 4)		Net Worth	\$ _____
Total	\$ _____	(Subtract total Liabilities from Total Assets)	

Contingent Liabilities (will not be used in determining net worth)

As Endorser or Co-Maker.....	\$ _____
Legal Claims & Judgments.....	\$ _____
Provision for Federal Income Tax.....	\$ _____
Other Special Debt.....	\$ _____

Section 1. Separate Property (for married applicants only) Describe all separate property held by you or your spouse, their current values, and why they are separate.

Section 2. Notes Payable to Banks and Others. (Use attachments if necessary. Each attachment must be identified as a part of this statement and signed.)

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

Section 3. Real Estate Owned.	(List each parcel separately. Identify primary Residence. Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)		
	Property A	Property B	Property C
Type of Property (e.g. residential, condo, timeshare, commercial, etc.)			
Address (include street, city and state)			
Date Purchased			
Original Cost			
Present Market Value			
Name & Address of Mortgage Holder			
Mortgage Balance			
Amount of Payment per Month/Year			
Status of Mortgage			

Section 4. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment and if delinquent, describe delinquency)

Section 5. Unpaid Taxes. (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

Section 6. Other Liabilities. (Describe in detail.)

Section 7. Life Insurance Held. (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries)

I certify the above and the statements contained in the attachments are true and accurate as of the stated date(s). These statements are made for the purpose of becoming eligible for the Disadvantaged Business Enterprise or Airport Concession Disadvantaged Business Enterprise Programs. I authorize the CUCP to make inquiries as necessary to verify the accuracy of the statements made and to determine my creditworthiness.

Signature: _____ Date: _____

Signature: _____ Date: _____

**Instructions to Assist in Completing the
Personal Financial Statement
for the California Unified Certification Program**



Please do not make adjustments to your figures pursuant to U.S. Department of Transportation (U.S. DOT) regulations 49 CFR Part 26 and Part 23. The agency that you apply to will use the information provided on your completed Personal Financial Statement to determine your Personal Net Worth according to 49 CFR Part 26 and Part 23. An individual's Personal Net Worth, according to 49 CFR Part 26 and Part 23 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.

For Airport Concessions Only:

- Other assets for which the individual is currently liable, which are properly documented and for which the individual's personal assets are encumbered to support existing financing for the ACDBE Business, to a maximum of \$3 million.

Personal Net Worth limit for DBE certification in accordance with 49 CFR Part 26

If your Personal Net Worth, according to 49 CFR Part 26, exceeds the \$1.32 million cap and you, individually, or you and other individuals are the majority owners of an applicant firm, the firm is not eligible for DBE certification. If the Personal Net Worth according to 49 CFR Part 26 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.

Personal Net Worth limit for ACDBE certification in accordance with 49 CFR Part 23

If your Personal Net Worth, according to 49 CFR Part 23, exceeds the \$750,000 cap and you, individually, or you and other individuals are the majority owners of an applicant firm, the firm is not eligible for ACDBE certification. If the Personal Net Worth according to 49 CFR Part 23 of the majority owner(s) exceeds the \$750,000 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.

General Instructions

- You must fill out all line items on the Personal Financial Statement to the best of your ability.
- If necessary, use additional sheet(s) of paper to report all information and details.
- If you have any questions about completing this form, please contact one of the certifying agencies on the Roster of Certifying Agencies.

Specific Instructions

DATE AND CONTACT INFORMATION

Be sure to include the date in the upper right corner of the first page and your contact information. Indicate whether the figures reported are for a married couple.

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 generally should be included.

Cash on hand & in Banks: Enter the total amount of cash on-hand and in bank accounts other than savings.

Savings Accounts: Enter the total amount in all savings accounts.

IRA or other Retirement Account: Enter the total present value of all IRAs and other retirement accounts, including any deferred compensation and pension plans.

Accounts & 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 any.

Life Insurance-Cash Surrender Value Only: Enter the value of any life insurance policies. This amount should be cash surrender value only, not the amount a beneficiary would receive upon your death, also known as face value. A complete description is required in Section 7.

Stocks and Bonds: Enter the current market value of your stocks and bonds.

Real Estate: Enter the current fair market value of all real estate owned. A complete listing and description of all real estate owned is required in Section 3.

Automobile-Present Value: Enter the current fair market value of all automobiles owned.

Other Personal Property: Enter the current fair market value of all other personal property owned, but not included in the previous entries. A complete description of these assets is required in Section 4.

Other Assets: Enter the current fair market value of all other assets owned, but not included in the previous entries. A complete description of these assets is required in Section 4.

LIABILITIES

Accounts Payable: Enter the total value of all unpaid accounts payable that is your responsibility.

Notes Payable to Bank and Others: Enter the total amount due on all notes payable to banks and others. This should not, however, include any mortgage balances. A complete description of all notes payable to banks and others is required in Section 2.

Installment Account (Auto): Enter amount of the present balance of the debt that you owe for auto installment account.

Installment Account (Other): Enter amount of the present balance of the debt that you owe for other installment account.

Loans on Life Insurance: Enter the total value of all loans due on life insurance policies.

Mortgages on Real Estate: Enter the total balance on all mortgages payable on real estate. A complete breakdown of all mortgages on real estate is required in Section 3.

Unpaid Taxes: Enter the total amount of all taxes that are currently due, but are unpaid. Contingent tax liabilities or anticipated taxes for current year should not be included. A complete description is required in Section 5.

Other Liabilities: Enter the total value due on all other liabilities not classified in the previous entries. A complete description is required in Section 6.

Net Worth: To compute Net Worth, add all liabilities and put that figure in the Total Liabilities line. Then subtract Total Liabilities from Total Assets to get your Net Worth. To check your figures, add Total Liabilities and Net Worth and the sum must equal Total Assets. If your figures do not match, your form will be returned to you to correct and complete again.

CONTINGENT LIABILITIES

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.

As Endorser or Co-Maker: Enter the total potential liabilities due as a result of being a co-signer for a loan or other commitments.

Legal Claims and Judgments: Enter the potential liabilities due as a result of legal claims from judgments, lawsuits, etc.

Provisions for Federal Income Tax: Enter the total amount of all federal taxes for which you are potentially liable due to an anticipated gain on the pending sale of an asset or other circumstances, such as pending disputes or litigation which could possibly result in a personal tax liability.

Other Special Debt: Enter the total amount due on all remaining potential debts not accounted for.

SECTION 1. SEPARATE PROPERTY

Identify all property that is not held jointly or as community property, include values, ownership, and a brief explanation why the property is not held jointly.

SECTION 2. NOTES PAYABLE TO BANKS AND OTHERS

Enter the name and address of note holder(s), original balance, current balance, payment amount, frequency, and how secured for each note payable as entered in the "Liabilities" column. Do not include loans for your business or mortgages for your properties.

SECTION 3. REAL ESTATE OWNED

Starting with your primary residence (be sure to identify it as your primary residence), enter the type of property, address, date of purchase, original cost, present fair market value, name and address of mortgage holder, mortgage account number, mortgage balance, amount of payment, and status of mortgage for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial properties, etc.

Total "Present Market Value" amounts should correspond with the "Real Estate" amount listed in the "Assets" column. Additionally, total "Mortgage Balance" amounts should correspond with the "Mortgages on Real Estate" amount listed in the "Liabilities" column. Attach additional sheets if needed.

SECTION 4. OTHER PERSONAL PROPERTY AND OTHER ASSETS

Itemize and describe in detail other personal property and other assets owned as listed in the "Assets" column. For other personal property, include boats, trailers, jewelry, furniture, household goods, collectibles, clothing, etc. For other assets, include equity interest in other businesses, trusts, investments, etc.

SECTION 5. UNPAID TAXES

Describe in detail as to the type, to whom payable, when due, amount, and to what property, if any, the tax lien attaches. Please refer to the unpaid taxes listed in the "Liabilities" column. If none, state "NONE." This section should not include the contingent tax liabilities or anticipated taxes owed for the current year. For any unusually large amounts, you must include documentation, such as tax liens, to support the amounts.

SECTION 6. OTHER LIABILITIES

Describe in detail any other liabilities as referenced by the value listed in the "Liabilities" column. If none, state "NONE." For any unusually large amounts, you must include documentation, such as bills, to support the amounts.

SECTION 7. LIFE INSURANCE HELD

Describe all life insurance policies held. Please be sure to include the face amount of the policies, name of insurance company and beneficiaries and cash surrender values of the policies.

EXECUTION OF STATEMENT

Be sure to sign and date at the end of the statement.

CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)



NAICS Codes

The California Unified Certification Program adopted the 2002 North American Industry Classification System (NAICS), an updated federal classification system, on October 27, 2003. Please indicate below areas of expertise that you perform in order of importance. Enclosed is a partial list of NAICS codes for your convenience.

For a full list of NAICS codes and assistance in locating appropriate NAICS codes and determining if your firm meets U.S. Small Business Administration (SBA) and U.S. DOT size standards, a search tool is available on the SBA web site at: <http://www.sba.gov/size/indexableofsize.html>. DBE applicants are first subject to the applicable small business size standards of the Small Business Administration (SBA). Second, the average annual gross receipts for the firm (including its affiliates) over the previous three fiscal years must not exceed the U.S. Department of Transportation's cap of \$22.41 million, as amended pursuant to SAFETEA-LU. Please note that size standards are subject to change at any time by the SBA. If you do not have Internet access or need assistance, please contact one of the certifying agencies on the enclosed Roster.

NAICS Code

Description of Work/Service

_____	_____
_____	_____
_____	_____
_____	_____
_____	_____

CALIFORNIA UNIFIED CERTIFICATION PROGRAM

List of NAICS Codes (partial)

110000	Agriculture, Forestry, Fishing and Hunting
111000	Crop Production
112000	Animal Production
113000	Forestry and Logging
114000	Fishing, Hunting and Trapping
115000	Support Activities for Agriculture and Forestry
210000	Mining
211000	Oil and Gas Extraction
212000	Mining (except Oil and Gas)
213000	Support Activities for Mining
220000	Utilities
221110	Hydroelectric, Fossil Fuel, Nuclear and Other Electric Power Generation
221120	Electric Power Transmission, Control and Distribution
221310	Water Supply and Irrigation Systems
230000	Construction*
236000	<i>Construction of Buildings</i>
236115	New Single-Family Housing Construction (except Operative Builders)
236116	New Multifamily Housing Construction (except Operative Builders)
236117	New Housing Operative Builders
236118	Residential Remodelers
236210	Industrial Building Construction
236220	Commercial and Institutional Building Construction
237000	<i>Heavy and Civil Engineering Construction</i>
237110	Water and Sewer Line and Related Structures Construction
237120	Oil and Gas Pipeline and Related Structures Construction
237130	Power and Communication Line and Related Structures Construction
237210	Land Subdivision
237310	Highway, Street, and Bridge Construction
237990	Other Heavy and Civil Engineering Construction
237990	Dredging and Surface Cleanup Activities
238000	<i>Specialty Trade Contractors</i>
238110	Poured Concrete Foundation and Structure Contractors
238120	Structural Steel and Precast Concrete Contractors
238130	Framing Contractors
238140	Masonry Contractors
238150	Glass and Glazing Contractors
238160	Roofing Contractors
238170	Siding Contractors
238190	Other Foundation, Structure, and Building Exterior Contractors
238210	Electrical Contractors
238220	Plumbing, Heating, and Air-Conditioning Contractors
238290	Other Building Equipment Contractors
238310	Drywall and Insulation Contractors
238320	Painting and Wall Covering Contractors
238330	Flooring Contractors
238340	Tile and Terrazzo Contractors
238350	Finish Carpentry Contractors
238390	Other Building Finishing Contractors
238910	Site Preparation Contractors
238990	All Other Specialty Trade Contractors
238990	Building and Property Specialty Trade Services

310000	Manufacturing
339999	
311000	<i>Food Manufacturing</i>
312000	<i>Beverage and Tobacco Product Manufacturing</i>
313000	<i>Textile Mills</i>
314000	<i>Textile Product Mills</i>
315000	<i>Apparel Manufacturing</i>
315211	Men's and Boys' Cut and Sew Apparel Contractors
315212	Women's, Girls', and Infants' Cut and Sew Apparel Contractors
315220	Men's and Boys' Cut and Sew Apparel Manufacturing
315230	Women's and Girls' Cut and Sew Apparel Manufacturing
315299	All Other Cut and Sew Apparel Manufacturing
315999	Other Apparel Accessories and Other Apparel Manufacturing
316000	<i>Leather and Allied Product Manufacturing</i>
316211	Rubber and Plastics Footwear Manufacturing
316213	Men's Footwear (except Athletic) Manufacturing
316214	Women's Footwear (except Athletic) Manufacturing
316219	Other Footwear Manufacturing
321000	<i>Wood Product Manufacturing</i>
322000	<i>Paper Manufacturing</i>
323000	<i>Printing and Related Support Activities</i>
323110	Commercial Lithographic Printing
323111	Commercial Gravure Printing
323112	Commercial Flexographic Printing
323113	Commercial Screen Printing
323114	Quick Printing
323115	Digital Printing
323116	Manifold Business Forms Printing
323117	Books Printing
323118	Blankbook, Loose-leaf Binder and Device Manufacturing
323119	Other Commercial Printing
323121	Tradebinding and Related Work
323122	Prepress Services
324000	<i>Petroleum and Coal Products Manufacturing</i>
324121	Asphalt Paving Mixture and Block Manufacturing
324122	Asphalt Shingle and Coating Materials Manufacturing
325000	<i>Chemical Manufacturing</i>
326000	<i>Plastics and Rubber Products Manufacturing</i>
326211	Tire Manufacturing (except Retreading)
326212	Tire Retreading
326220	Rubber and Plastics Hoses and Belting Manufacturing
326291	Rubber Product Manufacturing for Mechanical Use
326299	All Other Rubber Product Manufacturing
327000	<i>Nonmetallic Mineral Product Manufacturing</i>
331000	<i>Primary Metal Manufacturing</i>
332000	<i>Fabricated Metal Product Manufacturing</i>
332116	Metal Stamping
332322	Sheet Metal Work Manufacturing
332323	Ornamental and Architectural Metal Work Manufacturing
332710	Machine Shops
332721	Precision Turned Product Manufacturing
332996	Fabricated Pipe and Pipe Fitting Manufacturing
333000	<i>Machinery Manufacturing</i>
333120	Construction Machinery Manufacturing
333311	Automatic Vending Machine Manufacturing
333313	Office Machinery Manufacturing

*Note: evidence of State or other licensing is required in order to be classified in this industry, if applicable.

(Rev. 8/06)

California Unified Certification Program
List of NAICS Codes (partial)

333414	Heating Equipment (except Warm Air Furnaces) Manufacturing	336411	Aircraft Manufacturing
333415	Air-Conditioning and Warm Air Heating Equipment and Commercial and Industrial Refrigeration Equipment Manufacturing	336510	Railroad Rolling Stock Manufacturing
333514	Special Die and Tool, Die Set, Jig and Fixture Manufacturing	336611	Ship Building and Repairing
333613	Mechanical Power Transmission Equipment Manufacturing	336991	Motorcycle, Bicycle and Parts Manufacturing
333618	Other Engine Equipment Manufacturing	336999	All Other Transportation Equipment Manufacturing
333911	Pump and Pumping Equipment Manufacturing	337000	<i>Furniture and Related Product Manufacturing</i>
333921	Elevator and Moving Stairway Manufacturing	337127	Institutional Furniture Manufacturing
333922	Conveyor and Conveying Equipment Manufacturing	337211	Wood Office Furniture Manufacturing
333923	Overhead Traveling Crane, Hoist and Monorail System Manufacturing	337214	Office Furniture (Except Wood) Manufacturing
333924	Industrial Truck, Tractor, Trailer and Stacker Machinery Manufacturing	337215	Showcase, Partition, Shelving, and Locker Manufacturing
334000	<i>Computer and Electronic Product Manufacturing</i>	337920	Blind and Shade Manufacturing
334111	Electronic Computer Manufacturing	339000	<i>Miscellaneous Manufacturing</i>
334112	Computer Storage Device Manufacturing	339111	Laboratory Apparatus and Furniture Manufacturing
334113	Computer Terminal Manufacturing	339950	Sign Manufacturing
334119	Other Computer Peripheral Equipment Manufacturing	339991	Gasket, Packing, and Sealing Device Manufacturing
334210	Telephone Apparatus Manufacturing		
334220	Radiant Television Broadcasting and Wireless Communications Equipment Manufacturing	420000	Wholesale Trade
334290	Other Communications Equipment Manufacturing	423000	<i>Merchant Wholesalers, Durable Goods</i>
334310	Audio and Video Equipment Manufacturing	423110	Automobile and Other Motor Vehicle Merchant Wholesalers
334417	Electronic Connector Manufacturing	423120	Motor Vehicle Supplies and New Parts Merchant Wholesalers
334418	Printed Circuit Assembly (Electronic Assembly) Mfg	423130	Tire and Tube Merchant Wholesalers
334419	Other Electronic Component Manufacturing	423140	Motor Vehicle Parts (Used) Merchant Wholesalers
334511	Search, Detection, Navigation, Guidance, Aeronautical, and Nautical System and Instrument Manufacturing	423210	Furniture Merchant Wholesalers
334512	Automatic Environmental Control Manufacturing for Residential, Commercial and Appliance Use	423310	Lumber, Plywood, Millwork, and Wood Panel Merchant Wholesalers
334513	Instruments and Related Products Manufacturing for Measuring, Displaying, and Controlling Industrial Process Variables	423320	Brick, Stone, and Related Construction Material Merchant Wholesalers
334514	Totalizing Fluid Meter and Counting Device Manufacturing	423330	Roofing, Siding, and Insulation Material Merchant Wholesalers
334518	Watch, Clock, and Part Manufacturing	423390	Other Construction Material Merchant Wholesalers
334519	Other Measuring and Controlling Device Manufacturing	423410	Photographic Equipment and Supplies Merchant Wholesalers
334611	Software Reproducing	423420	Office Equipment Merchant Wholesalers
334612	Prerecorded Compact Disc (except Software), Tape, and Record Reproducing	423430	Computer and Computer Peripheral Equipment and Software Merchant Wholesalers
334613	Magnetic and Optical Recording Media Manufacturing	423440	Other Commercial Equipment Merchant Wholesalers
335000	<i>Electrical Equipment, Appliance and Component Manufacturing</i>	423450	Medical, Dental, and Hospital Equipment and Supplies Merchant Wholesalers
336000	<i>Transportation Equipment Manufacturing</i>	423490	Other Professional Equipment and Supplies Merchant Wholesalers
336112	Light Truck and Utility Vehicle Manufacturing	423510	Metal Service Centers and Other Metal Merchant Wholesalers
336120	Heavy Duty Truck Manufacturing	423610	Electrical Apparatus and Equipment, Wiring Supplies, and Related Equipment Merchant Wholesalers
336211	Motor Vehicle Body Manufacturing	423620	Electrical and Electronic Appliance, Television, and Radio Set Merchant Wholesalers
336212	Truck Trailer Manufacturing	423690	Other Electronic Parts and Equipment Merchant Wholesalers
336311	Carburetor, Piston, Piston Ring and Valve Manufacturing	423710	Hardware Merchant Wholesalers
336312	Gasoline Engine and Engine Parts Manufacturing	423720	Plumbing and Heating Equipment and Supplies (Hydronics) Merchant Wholesalers
336321	Vehicular Lighting Equipment Manufacturing	423730	Warm Air Heating and Air-Conditioning Equipment and Supplies Merchant Wholesalers
336322	Other Motor Vehicle Electrical and Electronic Equipment Manufacturing	423740	Refrigeration Equipment and Supplies Merchant Wholesalers
336330	Motor Vehicle Steering and Suspension Components (except Spring) Manufacturing	423810	Construction and Mining (except Oil Well) Machinery and Equipment Merchant Wholesalers
336340	Motor Vehicle Brake System Manufacturing	423820	Farm and Garden Machinery and Equipment Merchant Wholesalers
336350	Motor Vehicle Transmission and Power Train Parts Manufacturing	423830	Industrial Machinery and Equipment Merchant Wholesalers
336360	Motor Vehicle Seating and Interior Trim Manufacturing	423840	Industrial Supplies Merchant Wholesalers
336370	Motor Vehicle Metal Stamping	423850	Service Establishment Equipment and Supplies Merchant Wholesalers
336391	Motor Vehicle Air-Conditioning Manufacturing	423860	Transportation Equipment and Supplies (except Motor Vehicle) Merchant Wholesalers
336399	All Other Motor Vehicle Parts Manufacturing	423930	Recyclable Material Merchant Wholesalers
		423940	Other Miscellaneous Durable Goods Merchant Wholesalers

*Note: evidence of State or other licensing is required in order to be classified in this industry, if applicable.

California Unified Certification Program
List of NAICS Codes (partial)

424000	<i>Merchant Wholesalers, Nondurable Goods</i>
424110	Printing and Writing Paper Merchant Wholesalers
424120	Stationary and Office Supplies Merchant Wholesalers
424130	Industrial and Personal Service Paper Merchant Wholesalers
424210	Drugs and Druggists' Sundries Merchant Wholesalers
424310	Piece Goods, Notions, and Other Dry Goods Merchant Wholesalers
424320	Men's and Boys' Clothing and Furnishings Merchant Wholesalers
424330	Women's, Children's, and Infants' Clothing and Accessories Merchant Wholesalers
424340	Footwear Merchant Wholesalers
424410	General Line Grocery Merchant Wholesalers
424420	Packaged Frozen Food Merchant Wholesalers
424490	Other Grocery and Related Products Merchant Wholesalers
424610	Plastics Materials and Basic Forms and Shapes Merchant Wholesalers
424690	Other Chemical and Allied Products Merchant Wholesalers
424710	Petroleum Bulk Stations and Terminals
424720	Petroleum and Petroleum Products Merchant Wholesalers (except Bulk Stations and Terminals)
424920	Book, Periodical, and Newspaper Merchant Wholesalers
424930	Flower, Nursery Stock, and Florists' Supplies Merchant Wholesalers
424940	Tobacco and Tobacco Product Merchant Wholesalers
424950	Paint, Varnish, and Supplies Merchant Wholesalers
424990	Other Miscellaneous Nondurable Goods Merchant Wholesalers
425000	Wholesale Electronic Markets and Agents and Brokers
425110	Business to Business Electronic Markets
425120	Wholesale Trade Agents and Brokers
440000	
-	
459999	<i>Retail Trade</i>
441000	<i>Motor Vehicle and Parts Dealers</i>
441110	New Car Dealers
441120	Used Car Dealers
441221	Motorcycle Dealers
441222	Boat Dealers
441229	All Other Motor Vehicle Dealers
441229	Aircraft Dealers, Retail
441310	Automotive Parts and Accessories Stores
441320	Tire Dealers
442000	<i>Furniture and Home Furnishings Stores</i>
442110	Furniture Stores
442210	Floor Covering Stores
442291	Window Treatment Stores
442299	All Other Home Furnishings Stores
443000	<i>Electronics and Appliance Stores</i>
443111	Household Appliance Stores
443112	Radio, Television and Other Electronics Stores
443120	Computer and Software Stores
443130	Camera and Photographic Supplies Stores
444000	<i>Building Material and Garden Equipment and Supplies Dlr</i>
444110	Home Centers
444120	Paint and Wallpaper Stores
444130	Hardware Stores
444190	Other Building Material Dealers
444210	Outdoor Power Equipment Stores
444220	Nursery and Garden Centers
445000	<i>Food and Beverage Stores</i>

446000	<i>Health and Personal Care Stores</i>
447000	<i>Gasoline Stations</i>
448000	<i>Clothing and Clothing Accessories Stores</i>
448110	Men's Clothing Stores
448120	Women's Clothing Stores
448130	Children's and Infants' Clothing Stores
448140	Family Clothing Stores
448150	Clothing Accessories Stores
448190	Other Clothing Stores
448210	Shoe Stores
448320	Luggage and Leather Goods Stores
451000	<i>Sporting Good, Hobby, Book and Music Stores</i>
451211	Book Stores
451212	News Dealers and Newsstands
452000	<i>General Merchandise Store</i>
453000	<i>Miscellaneous Store Retailers</i>
453110	Florists
453210	Office Supplies and Stationery Stores
453220	Gift, Novelty and Souvenir Stores
453310	Used Merchandise Stores
454000	<i>Nonstore Retailers</i>
454111	Electronic Shopping
454112	Electronic Auctions
454113	Mail-Order Houses
454210	Vending Machine Operators
454311	Heating Oil Dealers
454312	Liquefied Petroleum Gas (Bottled Gas) Dealers
454319	Other Fuel Dealers
454390	Other Direct Selling Establishments
480000	
-	
499999	<i>Transportation</i>
481000	<i>Air Transportation</i>
481111	Scheduled Passenger Air Transportation
481112	Scheduled Freight Air Transportation
481211	Nonscheduled Chartered Passenger Air Transportation
481212	Nonscheduled Chartered Freight Air Transportation
481219	Other Nonscheduled Air Transportation
482000	<i>Rail Transportation</i>
483000	<i>Water Transportation</i>
484000	<i>Truck Transportation</i>
484110	General Freight Trucking, Local
484121	General Freight Trucking, Long-Distance, Truckload
484122	General Freight Trucking, Long-Distance, Less Than Truckload
484210	Used Household and Office Goods Moving
484220	Specialized Freight (except Used Goods) Trucking, Local
484230	Specialized Freight (except Used Goods) Trucking, Long-Distance
485000	<i>Transit and Ground Passenger Transportation</i>
485111	Mixed Mode Transit Systems
485112	Commuter Rail Systems
485113	Bus and Motor Vehicle Transit Systems
485119	Other Urban Transit Systems
485210	Interurban and Rural Bus Transportation
485310	Taxi Service
485320	Limousine Service
485410	School and Employee Bus Transportation
485510	Charter Bus Industry

*Note: evidence of State or other licensing is required in order to be classified in this industry, if applicable.

California Unified Certification Program
List of NAICS Codes (partial)

485991	Special Needs Transportation
485999	All Other Transit and Ground Passenger Transportation
486000	<i>Pipeline Transportation</i>
487000	<i>Scenic and Sightseeing Transportation</i>
488000	<i>Support Activities for Transportation</i>
488111	Air Traffic Control
488119	Other Airport Operations
488190	Other Support Activities for Air Transportation
488210	Support Activities for Rail Transportation
488310	Port and Harbor Operations
488320	Marine Cargo Handling
488390	Other Support Activities for Water Transportation
488410	Motor Vehicle Towing
488490	Other Support Activities for Road Transportation
488510	Freight Transportation Arrangement
488991	Packing and Crating
488999	All Other Support Activities for Transportation
491000	<i>Postal Service</i>
492000	<i>Couriers and Messengers</i>
492110	Couriers
492210	Local Messengers and Local Delivery
493000	<i>Warehousing and Storage</i>
493110	General Warehousing and Storage
493120	Refrigerated Warehousing and Storage
493190	Other Warehousing and Storage
510000	<i>Information</i>
511000	<i>Publishing Industries (except Internet)</i>
511110	Newspaper Publishers
511120	Periodical Publishers
511130	Book Publishers
511140	Directory and Mailing List Publishers
511199	All Other Publishers
511210	Software Publishers
512110	Motion Picture and Video Production
512191	Teleproduction and Other Postproduction Services
512199	Other Motion Picture and Video Industries
512210	Record Production
512220	Integrated Record Production/Distribution
512240	Sound Recording Studios
512290	Other Sound Recording Industries
515000	<i>Broadcasting (except Internet)</i>
515111	Radio Networks*
515112	Radio Stations*
515120	Television Broadcasting*
515210	Cable and Other Subscription Programming
516000	<i>Internet Publishing and Broadcasting</i>
516110	Internet Publishing and Broadcasting
517000	<i>Telecommunications</i>
517110	Wired Telecommunications Carriers
517211	Paging
517212	Cellular and Other Wireless Telecommunications
517310	Telecommunications Resellers
517410	Satellite Telecommunications
517510	Cable and Other Program Distribution
517910	Other Telecommunications
518000	<i>Internet Service Providers, Web Search Portals, and Data Processing Services</i>
518111	Internet Service Providers

518112	Web Search Portals
518210	Data Processing, Hosting, and Related Services
519000	<i>Other Information Services</i>
519110	News Syndicates
519120	Libraries and Archives
519190	All Other Information Services
520000	<i>Finance and Insurance*</i>
522000	<i>Credit Intermediation and Related Activities</i>
522220	Sales Financing
522291	Consumer Lending
522292	Real Estate Credit
522298	All Other Non-Depository Credit Intermediation
522310	Mortgage and Nonmortgage Loan Brokers
522320	Financial Transactions Processing, Reserve, and Clearing House Activities
522390	Other Activities Related to Credit Intermediation
523000	<i>Financial Investments and Related Activities</i>
523110	Investment Banking and Securities Dealing
523120	Securities Brokerage
523130	Commodity Contracts Dealing
523140	Commodity Contracts Brokerage
523910	Miscellaneous Intermediation
523920	Portfolio Management
523930	Investment Advice
523991	Trust, Fiduciary and Custody Activities
523999	Miscellaneous Financial Investment Activities
524000	<i>Insurance Carriers and Related Activities</i>
524113	Direct Life Insurance Carriers
524114	Direct Health and Medical Insurance Carriers
524126	Direct Property and Casualty Insurance Carriers
524127	Direct Title Insurance Carriers
524128	Other Direct Insurance (except Life, Health and Medical) Carriers
524130	Reinsurance Carriers
524210	Insurance Agencies and Brokerages
524291	Claims Adjusting
524292	Third Party Administration of Insurance and Pension Funds
524298	All Other Insurance Related Activities
525000	<i>Funds, Trusts and Other Financial Vehicles</i>
525110	Pension Funds
525120	Health and Welfare Funds
525190	Other Insurance Funds
525910	Open-End Investment Funds
525920	Trusts, Estates, and Agency Accounts
525930	Real Estate Investment Trusts
525990	Other Financial Vehicles
530000	<i>Real Estate and Rental and Leasing</i>
531000	<i>Real Estate</i>
531120	Lessors of Nonresidential Buildings (except Miniwarehouses)
531130	Lessors of Miniwarehouses and Self Storage Units
531190	Lessors of Other Real Estate Property
531210	Offices of Real Estate Agents and Brokers*
531312	Nonresidential Property Managers
531320	Offices of Real Estate Appraisers*
531390	Other Activities Related to Real Estate
532000	<i>Rental and Leasing Services</i>
532111	Passenger Car Rental
532112	Passenger Car Leasing

*Note: evidence of State or other licensing is required in order to be classified in this industry, if applicable.

California Unified Certification Program
List of NAICS Codes (partial)

532120	Truck, Utility Trailer, and RV (Recreational Vehicle) Rental and Leasing
532210	Consumer Electronics and Appliances Rental
532299	All Other Consumer Goods Rental
532310	General Rental Centers
532411	Commercial Air, Rail, and Water Transportation Equipment Rental and Leasing
532412	Construction, Mining and Forestry Machinery and Equipment Rental and Leasing
532420	Office Machinery and Equipment Rental and Leasing
532490	Other Commercial and Industrial Machinery and Equipment Rental and Leasing
533110	Lessors of Nonfinancial Intangible Assets (except Copyrighted Works)
540000	Professional, Scientific and Technical Services
541110	Offices of Lawyers*
541191	Title Abstract and Settlement Offices
541199	All Other Legal Services
541211	Offices of Certified Public Accountants*
541213	Tax Preparation Services*
541214	Payroll Services
541219	Other Accounting Services
541310	Architectural Services*
541320	Landscape Architectural Services*
541330	Engineering Services*
541340	Drafting Services
541340	Map Drafting
541350	Building Inspection Services
541360	Geophysical Surveying and Mapping Services*
541370	Surveying and Mapping (except Geophysical) Services*
541380	Testing Laboratories
541410	Interior Design Services
541420	Industrial Design Services
541430	Graphic Design Services
541490	Other Specialized Design Services
541511	Custom Computer Programming Services
541512	Computer Systems Design Services
541513	Computer Facilities Management Services
541519	Other Computer Related Services
541611	Administrative Management and General Management Consulting Services
541612	Human Resources and Executive Search Consulting Services
541613	Marketing Consulting Services
541614	Process, Physical Distribution and Logistics Consulting Services
541618	Other Management Consulting Services
541620	Environmental Consulting Services
541690	Other Scientific and Technical Consulting Services
541710	Research and Development in the Physical, Engineering, and Life Sciences
541720	Research and Development in the Social Sciences and Humanities
541810	Advertising Agencies
541820	Public Relations Agencies
541830	Media Buying Agencies
541840	Media Representatives
541850	Display Advertising
541860	Direct Mail Advertising
541870	Advertising Material Distribution Services

541890	Other Services Related to Advertising
541910	Marketing Research and Public Opinion Polling
541922	Commercial Photography
541930	Translation and Interpretation Services
541990	All Other Professional, Scientific and Technical Services
550000	Management of Companies and Enterprises
551111	Offices of Bank Holding Companies
551112	Offices of Other Holding Companies
560000	Administrative and Support Services
561000	<i>Administrative and Support Services</i>
561110	Office Administrative Services
561210	Facilities Support Services
561210	Base Maintenance
561310	Employment Placement Agencies
561320	Temporary Help Services
561330	Employee Leasing Services
561410	Document Preparation Services
561421	Telephone Answering Services
561422	Telemarketing Bureaus
561431	Private Mail Centers
561439	Other Business Service Centers (including Copy Shops)
561440	Collection Agencies
561450	Credit Bureaus
561491	Repossession Services
561492	Court Reporting and Stenotype Services
561499	All Other Business Support Services
561510	Travel Agencies
561520	Tour Operators
561599	All Other Travel Arrangement and Reservation Services
561611	Investigation Services
561612	Security Guards and Patrol Services*
561613	Armored Car Services
561621	Security Systems Services (except Locksmiths)
561622	Locksmiths
561710	Exterminating and Pest Control Services*
561720	Janitorial Services
561730	Landscaping Services*
561740	Carpet and Upholstery Cleaning Services
561790	Other Services to Buildings and Dwellings
561910	Packaging and Labeling Services
561920	Convention and Trade Show Organizers
561990	All Other Support Services
562000	<i>Waste Management and Remediation Services</i>
562111	Solid Waste Collection
562112	Hazardous Waste Collection*
562119	Other Waste Collection
562211	Hazardous Waste Treatment and Disposal*
562219	Other Nonhazardous Waste Treatment and Disposal
562910	Remediation Services
562910	Environmental Remediation Services
562920	Materials Recovery Facilities
562998	All Other Miscellaneous Waste Management Services
610000	Educational Services
611410	Business and Secretarial Schools
611420	Computer Training
611430	Professional and Management Development Training
611512	Flight Training

*Note: evidence of State or other licensing is required in order to be classified in this industry, if applicable.

California Unified Certification Program
List of NAICS Codes (partial)

611513	Apprenticeship Training
611519	Other Technical and Trade Schools
611630	Language Schools
611691	Exam Preparation and Tutoring
611692	Automobile Driving Schools
611699	All Other Miscellaneous Schools and Instruction
611710	Educational Support Services
620000	Health Care and Social Assistance*
621000	<i>Ambulatory Health Care Services</i>
621110	Offices of Physicians
621210	Offices of Dentists
621310	Offices of Chiropractors
621320	Offices of Optometrists
621330	Offices of Mental Health Practitioners (except Physicians)
621340	Offices of Physical, Occupational and Speech Therapists and Audiologists
621391	Offices of Podiatrists
621399	Offices of All Other Miscellaneous Health Practitioners
621410	Family Planning Centers
621420	Outpatient Mental Health and Substance Abuse Centers
621492	Kidney Dialysis Centers
621493	Freestanding Ambulatory Surgical and Emergency Centers
621498	All Other Outpatient Care Centers
621511	Medical Laboratories
621512	Diagnostic Imaging Centers
621610	Home Health Care Services
621910	Ambulance Services
621999	All Other Miscellaneous Ambulatory Health Care Services—
622000	<i>Hospitals</i>
623000	<i>Nursing and Residential Care Facilities</i>
624000	<i>Social Assistance</i>
624110	Child and Youth Services
624120	Services for the Elderly and Persons with Disabilities
624190	Other Individual and Family Services
624210	Community Food Services
624221	Temporary Shelters
624229	Other Community Housing Services
624230	Emergency and Other Relief Services
624310	Vocational Rehabilitation Services
624410	Child Day Care Services
710000	Arts, Entertainment and Recreation
711000	Performing Arts, Spectator Sports and Related Industries
712000	Museums, Historical Sites and Similar Institutions
713000	Amusement, Gambling and Recreation Industries
720000	Accommodation and Food Services
721000	<i>Accommodation</i>
722000	<i>Food Services and Drinking Places</i>
722110	Full-Service Restaurants
722211	Limited-Service Restaurants
722212	Cafeterias
722213	Snack and Nonalcoholic Beverage Bars
722310	Food Service Contractors
722320	Caterers
722330	Mobile Food Services
722410	Drinking Places (Alcoholic Beverages)

810000	Other Services
811000	<i>Repair and Maintenance</i>
811111	General Automotive Repair
811112	Automotive Exhaust System Repair
811113	Automotive Transmission Repair
811118	Other Automotive Mechanical and Electrical Repair and Maintenance
811121	Automotive Body, Paint and Interior Repair and Maintenance
811122	Automotive Glass Replacement Shops
811191	Automotive Oil Change and Lubrication Shops
811192	Car Washes
811198	All Other Automotive Repair and Maintenance
811211	Consumer Electronics Repair and Maintenance
811212	Computer and Office Machine Repair and Maintenance
811213	Communication Equipment Repair and Maintenance
811219	Other Electronic and Precision Equipment Repair and Maintenance
811310	Commercial and Industrial Machinery and Equipment (except Automotive and Electronic) Repair and Maintenance
811411	Home and Garden Equipment Repair and Maintenance
811412	Appliance Repair and Maintenance
811420	Reupholstery and Furniture Repair
811430	Footwear and Leather Goods Repair
812000	<i>Personal and Laundry Services</i>
812320	Drycleaning and Laundry Services (except Coin-Operated)
812331	Linen Supply
812332	Industrial Launderers
812921	Photo Finishing Laboratories (except One-Hour)
812922	One-Hour Photo Finishing
812930	Parking Lots and Garages
813000	<i>Religious, Grantmaking, Civic, Professional and Similar Organizations</i>

*Note: evidence of State or other licensing is required in order to be classified in this industry, if applicable.

CALIFORNIA UNIFIED CERTIFICATION PROGRAM (CUCP)



Roster of Certifying Agencies

Note: If you received this information on hard copy, the California Unified Certification Program Application Package is available on the website at <http://californiaucp.org/>

If the firm has its principal place of business in another state and is currently certified in that state, please contact the California Department of Transportation in the Northern Cluster.

<i>Southern Cluster</i>				
Area	Counties	Certifying Agencies		
Riverside, Imperial & San Diego (RIS)	Imperial Riverside San Diego	<p><u>SUBMIT APPLICATION PACKAGE TO:</u></p> <ul style="list-style-type: none"> ➤ CITY OF LOS ANGELES* ➤ LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY <p style="text-align: center;"><u>OR</u></p> <ul style="list-style-type: none"> ➤ CALIFORNIA DEPARTMENT OF TRANSPORTATION <p style="text-align: center;">SEE CONTACT INFORMATION BELOW</p>		
Los Angeles Area	Kern Los Angeles Orange San Bernardino San Luis Obispo Santa Barbara Ventura	<table style="width: 100%; border: none;"> <tr> <td style="width: 50%; vertical-align: top;"> <p>CITY OF LOS ANGELES* Bureau of Contract Admin. Centralized Certification Section 1149 S. Broadway, Ste 300 Los Angeles, CA 90015 Phone: (213) 847-2684 Fax: (213) 847-2777 http://bca.lacity.org</p> <p style="text-align: center;">*Only firms actively pursuing contracting opportunities with City of Los Angeles</p> <p style="text-align: center;">or</p> <p style="text-align: center;">firms located within City of Los Angeles may apply</p> </td> <td style="width: 50%; vertical-align: top;"> <p>LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (METRO) Diversity and Economic Opportunity Department One Gateway Plaza, MS 99-8-4 Los Angeles, CA 90012 Phone: (213) 922-2600 Fax: (213) 922-7660 www.metro.net</p> </td> </tr> </table>	<p>CITY OF LOS ANGELES* Bureau of Contract Admin. Centralized Certification Section 1149 S. Broadway, Ste 300 Los Angeles, CA 90015 Phone: (213) 847-2684 Fax: (213) 847-2777 http://bca.lacity.org</p> <p style="text-align: center;">*Only firms actively pursuing contracting opportunities with City of Los Angeles</p> <p style="text-align: center;">or</p> <p style="text-align: center;">firms located within City of Los Angeles may apply</p>	<p>LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (METRO) Diversity and Economic Opportunity Department One Gateway Plaza, MS 99-8-4 Los Angeles, CA 90012 Phone: (213) 922-2600 Fax: (213) 922-7660 www.metro.net</p>
<p>CITY OF LOS ANGELES* Bureau of Contract Admin. Centralized Certification Section 1149 S. Broadway, Ste 300 Los Angeles, CA 90015 Phone: (213) 847-2684 Fax: (213) 847-2777 http://bca.lacity.org</p> <p style="text-align: center;">*Only firms actively pursuing contracting opportunities with City of Los Angeles</p> <p style="text-align: center;">or</p> <p style="text-align: center;">firms located within City of Los Angeles may apply</p>	<p>LOS ANGELES COUNTY METROPOLITAN TRANSPORTATION AUTHORITY (METRO) Diversity and Economic Opportunity Department One Gateway Plaza, MS 99-8-4 Los Angeles, CA 90012 Phone: (213) 922-2600 Fax: (213) 922-7660 www.metro.net</p>			

Northern Cluster

Area	Counties	Certifying Agencies	
<p>Bay Area/ Central Valley</p>	<p>Alameda Amador Calaveras Contra Costa Fresno Kings Madera Marin Mariposa Merced Monterey Napa San Benito San Francisco San Joaquin San Mateo Santa Clara Santa Cruz Solano Sonoma Stanislaus Tulare Tuolumne</p>	<p>S.F. BAY AREA RAPID TRANSIT DISTRICT (BART) Office of Civil Rights 300 Lakeside Drive 18th Floor Oakland, CA 94612 Phone: (510) 464-6100 Fax: (510) 464-7587 www.bart.gov</p> <p>CITY OF FRESNO DBE Program 2101 G Street, Building A Fresno, CA 93706 Phone: (559) 621-1132 Fax: (559) 488-1069 www.fresno.gov</p> <p>SANTA CLARA VALLEY TRANSPORTATION AUTHORITY (VTA) Office of Small & Disadvantaged Businesses 3331 North First Street, Bldg. A San Jose, CA 95134-1906 Phone: (408) 321-5962 Fax: (408) 955-9729 www.vta.org</p> <p>CENTRAL CONTRA COSTA TRANSIT AUTHORITY (CCCTA) Office of Civil Rights 2477 Arnold Industrial Way Concord, CA 94520-5327 Phone: (925) 676-1976 Fax: (925) 686-2630 www.cccta.org</p>	<p>SAN FRANCISCO MUNICIPAL TRANSPORTATION AGENCY (SFMTA) Contract Compliance Office 1 South Van Ness Ave, 6th Floor San Francisco, CA 94103 Phone: (415) 701-4436 Fax: (415) 701-4347 www.sfmuni.com</p> <p>SAN MATEO COUNTY TRANSIT DISTRICT (SAMTRANS)/ PENINSULA CORRIDOR JOINT POWERS BOARD (JPB) DBE Office 1250 San Carlos Avenue San Carlos, CA 94070 Phone: (650) 508-7939 Fax: (650) 508-7738 www.samtrans.com</p>
<p>Northern California</p>	<p>Alpine Nevada Butte Placer Colusa Plumas Del Norte Sacramento El Dorado Shasta Glenn Sierra Humboldt Siskiyou Inyo Sutter Lake Tehama Lassen Trinity Mendocino Yolo Modoc Yuba Mono</p>	<p>CALIFORNIA DEPARTMENT OF TRANSPORTATION (CALTRANS) Office of Business and Economic Opportunity/MS 79 1823 - 14th Street Sacramento, CA 95814 Phone: (916) 324-1700 or (866) 810-6346 Fax: (916) 324-1862 www.dot.ca.gov</p>	<p>YOLO COUNTY TRANSPORTATION DISTRICT (YOLOBUS) DBE Programs 350 Industrial Way Woodland, CA 95776 Phone: (530) 402-2817 Fax: (530) 661-1732 www.yolobus.com</p>

* List of agencies subject to change

Attachment 9

Procedures for Removal of DBE's Eligibility

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

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

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

(3) Information 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 you certified the firm; or

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) [Reserved]

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

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

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

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

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

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

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

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

Attachment 10

Regulations: 49 CFR Parts 23 (including Appendix A) and 26 (including Appendices A-F)

Title 49: Transportation

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS

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Authority: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

Source: 70 FR 14508, Mar. 22, 2005, unless otherwise noted.

Subpart A—General

§ 23.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- (b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- (c) To ensure that the Department's ACDBE 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 ACDBEs;
- (e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and
- (f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing opportunities for ACDBEs.

§ 23.3 What do the terms used in this part mean?

Administrator means the Administrator of the Federal Aviation Administration (FAA).

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121, except that the provisions of SBA regulations concerning affiliation in the context of joint ventures (13 CFR §121.103(f)) do not apply to this part.

(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 ACDBE program.

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a concession that is a for-profit small business concern—

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

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 (43 U.S.C. 1601 *et seq.*)

Car dealership means an establishment primarily engaged in the retail sale of new and/or used automobiles. Car dealerships frequently maintain repair departments and carry stocks of replacement parts, tires, batteries, and automotive accessories. Such establishments also frequently sell pickup trucks and vans at retail. In the standard industrial classification system, car dealerships are categorized in NAICS code 441110.

Concession means one or more of the types of for-profit businesses listed in paragraph (1) or (2) of this definition:

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

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

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

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

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

(i) Leases.

(ii) Subleases.

(iii) Permits.

(iv) Contracts or subcontracts.

(v) Other instruments or arrangements.

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

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

Concessionaire means a firm that owns and controls a concession or a portion of a concession.

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

Direct ownership arrangement means a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

Good faith efforts means efforts to achieve an ACDBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the program requirement.

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, father-in-law, brother-in-law, sister-in-law, or registered domestic partner.

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

Joint venture means an association of an ACDBE 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 ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Joint venture entities are not certified as ACDBEs.

Large hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least one percent of all passenger boardings in the United States.

Management contract or subcontract means an agreement with a recipient or another management contractor under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the recipient. The managing agent generally receives, as compensation, a flat fee or a percentage of the gross receipts or profit from the business activity. For purposes of this subpart, the business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at an airport subject to this subpart, and be engaged in the sale of consumer goods or provision of services to the public.

Material amendment means a significant change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope of the concession privilege. Examples of nonmaterial amendments include a change in the name of the concessionaire or a change to the payment due dates.

Medium hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least 0.25 percent of all passenger boardings in the United States but less than one percent of such passenger boardings.

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

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii that is a not-for-profit organization chartered by the State of Hawaii, and is controlled by Native Hawaiians

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

Nonhub primary airport means a commercial service airport that has more than 10,000 passenger boardings each year but less than 0.05 percent of all passenger boardings in the United States.

Part 26 means 49 CFR part 26, the Department of Transportation's disadvantaged business enterprise regulation for DOT-assisted contracts.

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 following: The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; the individual's equity in his or her primary place of residence; and other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business), to a maximum of \$3 million. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.

Primary airport means a commercial service airport that the Secretary determines to have more than 10,000 passengers enplaned annually.

Primary industry classification means the North American Industrial Classification System (NAICS) code designation that best describes the primary business of a firm. The NAICS Manual is available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its Web site (<http://www.ntis.gov/naics>).

Primary recipient means a recipient to which DOT financial assistance is extended through the programs of the FAA and which passes some or all of it on to another recipient.

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

Race-conscious means a measure or program that is focused specifically on assisting only ACDBEs, including women-owned ACDBEs. For the purposes of this part, race-conscious measures include gender-conscious measures.

Race-neutral means a measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.

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

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

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

Small business concern means a for profit business that does not exceed the size standards of §23.33 of this part.

Small hub airport means a publicly owned commercial service airport that has a number of passenger boardings equal to at least 0.05 percent of all passenger boardings in the United States but less than 0.25 percent of such passenger boardings.

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 determined by a recipient 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 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 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.

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA.

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

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

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

§ 23.5 To whom does this part apply?

If you are a recipient that has received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code, this part applies to you.

§ 23.7 Program reviews.

In 2010, and thereafter at the discretion of the Secretary, the Department will initiate a review of the ACDBE program to determine what, if any, modifications should be made to this part.

[75 FR 16358, Apr. 1, 2010]

§ 23.9 What are the nondiscrimination and assurance requirements of this part for recipients?

(a) As a recipient, you must meet the non-discrimination requirements provided in part 26, §26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.

(b) You must also take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered by this part.

(c) You must include the following assurances in all concession agreements and management contracts you execute with any firm after April 21, 2005:

(1) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

(2) "The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements."

§ 23.11 What compliance and enforcement provisions are used under this part?

The compliance and enforcement provisions of part 26 (§§26.101 and 26.105 through 26.109) apply to this part in the same way that they apply to FAA recipients and programs under part 26.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

§ 23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 23 and issued after April 21, 2005, express the official positions and views of the Department of Transportation or the Federal Aviation Administration.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, and the FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or the FAA, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 23.

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

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

(1) You must apply through the FAA. The application must include a specific program proposal and address how you will meet the criteria of paragraph (d)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the ACDBE community and at least one public hearing. Your application must include a

summary of the public participation process and the information gathered through it.

(2) Your application must show that—

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

(ii) Conditions at your airport are appropriate for implementing the proposal;

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

(iv) Your proposal is consistent with applicable law and FAA program requirements.

(3) The FAA Administrator has the authority to approve your application. If the Administrator grants your application, you may administer your ACDBE program as provided in your proposal, subject to the following conditions:

(i) ACDBE eligibility is determined as provided in subpart C of this part, and ACDBE participation is counted as provided in §§23.53 through 23.55.

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

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

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

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

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

Subpart B—ACDBE Programs

§ 23.21 Who must submit an ACDBE program to FAA, and when?

(a) Except as provided in paragraph (e) of this section, if you are a primary airport that has or was required to have a concessions DBE program prior to April 21, 2005, you must submit a revised ACDBE program meeting the requirements of this part to the appropriate FAA regional office for approval.

(1) You must submit this revised program on the same schedule provided for your first submission of overall goals in §23.45(a) of this part.

(2) Timely submission and FAA approval of your revised ACDBE program is a condition of eligibility for FAA financial assistance.

(3) Until your new ACDBE program is submitted and approved, you must continue to implement your concessions DBE program that was in effect before the effective date of this amendment to part 23, except with respect to any provision that is contrary to this part.

(b) If you are a primary airport that does not now have a DBE concessions program, and you apply for a grant of FAA funds for airport planning and development under 49 U.S.C. 47107 *et seq.*, you must submit an ACDBE program to the FAA at the time of your application. Timely submission and FAA approval of your ACDBE program are conditions of eligibility for FAA financial assistance.

(c) If you are the owner of more than one airport that is required to have an ACDBE program, you may implement one plan for all your locations. If you do so, you must establish a separate ACDBE goal for each location.

(d) If you make any significant changes to your ACDBE program at any time, you must provide the amended program to the FAA for approval before implementing the changes.

(e) If you are a non-primary airport, non-commercial service airport, a general aviation airport, reliever airport, or any other airport that does not have scheduled commercial service, you are not required to have an ACDBE program. However, you must take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

§ 23.23 What administrative provisions must be in a recipient's ACDBE program?

(a) If, as a recipient that must have an ACDBE program, the program must include provisions for a policy statement, liaison officer, and directory, as provided in part 26, §§26.23, 26.25, and 26.31, as well as certification of ACDBEs as provided by Subpart C of this part. You must include a statement in your program committing you to operating your ACDBE program in a nondiscriminatory manner.

(b) You may combine your provisions for implementing these requirements under this part and part 26 (e.g. , a single policy statement can cover both Federally-assisted airport contracts and concessions; the same individual can act as the liaison officer for both part 23 and part 26 matters).

§ 23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

(a) You must include in your ACDBE program a narrative description of the types of measures you intend to make to ensure nondiscriminatory participation of ACDBEs in concession and other covered activities.

(b) Your ACDBE program must provide for setting goals consistent with the requirements of Subpart D of this part.

(c) Your ACDBE program must provide for seeking ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others.

(d) Your ACDBE program must include race-neutral measures that you will take. You must maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. These are responsibilities that you directly undertake as a recipient, in addition to the efforts that concessionaires make, to obtain ACDBE participation. The following are examples of race-neutral measures you can implement:

(1) Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part;

(2) Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;

(3) When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs

(4) Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;

(5) Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the recipient's ACDBE program will affect the procurement process;

(6) Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and

(7) Establishing a business development program (see part 26, §26.35); technical assistance program; or taking other steps to foster ACDBE participation in concessions.

(e) Your ACDBE program must also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures you can implement:

(1) Establishing concession-specific goals for particular concession opportunities.

(i) If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with a ACDBE, calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

(ii) If the goal applies to purchases and/or leases of goods and services, calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire.

(iii) To be eligible to be awarded the concession, competitors must make good faith efforts to meet this goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.

(iv) The administrative procedures applicable to contract goals in part 26, §26.51–53, apply with respect to concession-specific goals.

(2) Negotiation with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or

measures, in the operation of the concession.

(3) With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

(f) Your ACDBE program must require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs.

(g) As provided in §23.61 of this part, you must not use set-asides and quotas as means of obtaining ACDBE participation.

§ 23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?

(a) As a recipient, you must retain sufficient basic information about your program implementation, your certification of ACDBEs, and the award and performance of agreements and contracts to enable the FAA to determine your compliance with this part. You must retain this data for a minimum of three years following the end of the concession agreement or other covered contract.

(b) Beginning March 1, 2006, you must submit an annual report on ACDBE participation using the form found in appendix A to this part. You must submit the report to the appropriate FAA Regional Civil Rights Office.

§ 23.29 What monitoring and compliance procedures must recipients follow?

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts, the enforcement mechanisms, and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. Your program must describe in detail the level of effort and resources devoted to monitoring and enforcement.

Subpart C—Certification and Eligibility of ACDBEs

§ 23.31 What certification standards and procedures do recipients use to certify ACDBEs?

(a) As a recipient, you must use, except as provided in this subpart, the procedures and standards of part 26, §§26.61–91 for certification of ACDBEs to participate in your concessions program. Your ACDBE program must incorporate the use of these standards and procedures and must provide that certification decisions for ACDBEs will be made by the Unified Certification Program (UCP) in your state (see part 26, §26.81).

(b) The UCP's directory of eligible DBEs must specify whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

(c) As an airport or UCP, you must review the eligibility of currently certified ACDBE firms to make sure that they meet the eligibility standards of this part.

(1) You must complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later.

(2) You must direct all currently certified ACDBEs to submit to you by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

§ 23.33 What size standards do recipients use to determine the eligibility of ACDBEs?

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$52.47 million.

(b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:

(1) Banks and financial institutions: \$1 billion in assets;

(2) Car rental companies: \$69.97 million average annual gross receipts over the firm's three previous fiscal years, as adjusted by the Department for inflation every two years from April 3, 2009.

(3) Pay telephones: 1,500 employees;

(4) Automobile dealers: 350 employees.

(c) The Department adjusts the numbers in paragraphs (a) and (b)(2) of this section using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. The Department publishes a Federal Register document informing the public of each adjustment.

[74 FR 15224, Apr. 3, 2009]

§ 23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?

The personal net worth standard used in determining eligibility for purposes of this part is \$750,000. Any individual who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

§ 23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?

(a) You must presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. By meeting the size, disadvantage (including personal net worth), ownership and control standards of part 26, the firm will have also met the eligibility standards for part 23.

(b) However, before certifying such a firm, you must ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in the concessions program. In addition, you are not required to certify a part 26 DBE as a part 23 ACDBE if the firm does not do work relevant to the airport's concessions program.

§ 23.39 What other certification requirements apply in the case of ACDBEs?

(a) The provisions of part 26, §§26.83 (c)(2) through (c)(6) do not apply to certifications for purposes of this part. Instead, in determining whether a firm is an eligible ACDBE, you must take the following steps:

- (1) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;
- (2) Analyze the ownership of stock of the firm, if it is a corporation;
- (3) Analyze the bonding and financial capacity of the firm;
- (4) Determine the work history of the firm, including any concession contracts or other contracts it may have received;
- (5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;
- (6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform.

(b) In reviewing the affidavit required by part 26, §26.83(j), you must ensure that the ACDBE firm meets the applicable size standard in §23.33.

(c) For purposes of this part, the term prime contractor in part 26, §26.87(i) includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

(d) With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of part 26, §26.73(i) do not apply under this part. The eligibility of ANC-owned firms for purposes of this part is governed by §26.73(h).

(e) When you remove a concessionaire's eligibility after the concessionaire has entered a concession agreement, because the firm exceeded the small business size standard or because an owner has exceeded the personal net worth standard, and the firm in all other respects remains an eligible DBE, you may continue to count the concessionaire's participation toward DBE goals during the remainder of the current concession agreement. However, you must not count the concessionaire's participation toward DBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (e.g. , in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

(f) When UCPs are established in a state (see part 26, §26.81), the UCP, rather than individual recipients, certifies firms for the ACDBE concession program.

(g) You must use the Uniform Application Form found in appendix F to part 26. However, you must instruct applicants to take the following additional steps:

- (1) In the space available in section 2(B)(7) of the form, the applicant must state that it is applying for certification as an ACDBE.
- (2) With respect to section 4(C) of the form, the applicant must provide information on an attached page concerning the

address/location, ownership/lease status, current value of property or lease, and fees/lease payments paid to the airport.

(3) The applicant need not complete section 4(I) and (J). However, the applicant must provide information on an attached page 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.

(h) Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs. As a car rental company or private terminal owner or lessee, you must obtain ACDBE participation from firms which a recipient or UCPs have certified as ACDBEs.

(i) You must use the certification standards of this part to determine the ACDBE eligibility of firms that provide goods and services to concessionaires.

Subpart D—Goals, Good Faith Efforts, and Counting

§ 23.41 What is the basic overall goal requirement for recipients?

(a) If you are a recipient who must implement an ACDBE program, you must, except as provided in paragraph (b) of this section, establish two separate overall ACDBE goals. The first is for car rentals; the second is for concessions other than car rentals.

(b) If your annual car rental concession revenues, averaged over the three-years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a car rental overall goal. If your annual revenues for concessions other than car rentals, averaged over the three years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a non-car rental overall goal.

(c) Each overall goal must cover a three-year period. You must review your goals annually to make sure they continue to fit your circumstances appropriately. You must report to the FAA any significant adjustments that you make to your goal in the time before your next scheduled submission.

(d) Your goals established under this part must provide for participation by all certified ACDBEs and may not be subdivided into group-specific goals.

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

§ 23.43 What are the consultation requirements in the development of recipients' overall goals?

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(a) As a recipient, you must consult with stakeholders before submitting your overall goals to FAA.

(b) Stakeholders with whom you must consult include, but are not limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the recipient's efforts to increase participation of ACDBEs.

§ 23.45 What are the requirements for submitting overall goal information to the FAA?

(a) You must submit your overall goals to the appropriate FAA Regional Civil Rights Office for approval. Your first set of overall goals meeting the requirements of this subpart are due on the following schedule:

(1) If you are a large or medium hub primary airport on April 21, 2005, by January 1, 2006. You must make your next submissions by October 1, 2008.

(2) If you are a small hub primary airport on April 21, 2005, by October 1, 2006.

(3) If you are a nonhub primary airport on April 21, 2005, by October 1, 2007.

(b) You must then submit new goals every three years after the date that applies to you.

(c) Timely submission and FAA approval of your overall goals is a condition of eligibility for FAA financial assistance.

(d) In the time before you make your first submission under paragraph (a) of this section, you must continue to use the overall goals that have been approved by the FAA before the effective date of this part.

(e) Your overall goal submission must include a description of the method used to calculate your goals and the data you relied on. You must "show your work" to enable the FAA to understand how you concluded your goals were appropriate. This means that you must provide to the FAA the data, calculations, assumptions, and reasoning used in establishing your goals.

(f) Your submission must include your projection of the portions of your overall goals you propose to meet through use of race-neutral and race-conscious means, respectively, and the basis for making this projection (see §23.51(d)(5))

(g) FAA may approve or disapprove the way you calculated your goal, including your race-neutral/race-conscious "split," as part of its review of your plan or goal submission. Except as provided in paragraph (h) of this section, the FAA does not approve or disapprove the goal itself (*i.e.* , the number).

(h) If the FAA determines that your goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with you, adjust your overall goal or race-conscious/race-neutral "split." The adjusted goal represents the FAA's determination of an appropriate overall goal for ACDBE participation in the recipient's concession program, based on relevant data and analysis. The adjusted goal is binding on you.

(i) If a new concession opportunity the estimated average annual gross revenues of which are anticipated to be \$200,000 or greater arises at a time that falls between normal submission dates for overall goals, you must submit an appropriate adjustment to your overall goal to the FAA for approval at least six months before executing the concession agreement for the new concession opportunity.

§ 23.47 What is the base for a recipient's goal for concessions other than car rentals?

(a) As a recipient, the base for your goal includes the total gross receipts of concessions, except as otherwise provided in this section.

(b) This base does not include the gross receipts of car rental operations.

(c) The dollar amount of a management contract or subcontract with a non-ACDBE and the gross receipts of business activities to which a management or subcontract with a non-ACDBE pertains are not added to this base.

(d) This base does not include any portion of a firm's estimated gross receipts that will not be generated from a concession.

Example to paragraph (d): A firm operates a restaurant in the airport terminal which serves the traveling public and under the same lease agreement, provides in-flight catering service to air carriers. The projected gross receipts from the restaurant are included in the overall goal calculation, while the gross receipts to be earned by the in-flight catering services are not.

§ 23.49 What is the base for a recipient's goal for car rentals?

Except in the case where you use the alternative goal approach of §23.51(c)(5)(ii), the base for your goal is the total gross receipts of car rental operations at your airport. You do not include gross receipts of other concessions in this base.

§ 23.51 How are a recipient's overall goals expressed and calculated?

(a) Your objective in setting a goal is to estimate the percentage of the base calculated under §§23.47–23.49 that would be performed by ACDBEs in the absence of discrimination and its effects.

(1) This percentage is the estimated ACDBE participation that would occur if there were a "level playing field" for firms to work as concessionaires for your airport.

(2) In conducting this goal setting process, you are determining the extent, if any, to which the firms in your market area have suffered discrimination or its effects in connection with concession opportunities or related business opportunities.

(3) You must complete the goal-setting process separately for each of the two overall goals identified in §23.41 of this part.

(b)(1) Each overall concessions goal must be based on demonstrable evidence of the availability of ready, willing and able ACDBEs relative to all businesses ready, willing and able to participate in your ACDBE program (hereafter, the "relative availability of ACDBEs").

(2) You cannot simply rely on the 10 percent national aspirational goal, your previous overall goal, or past ACDBE participation rates in your program without reference to the relative availability of ACDBEs in your market.

(3) Your market area is defined by the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms which receive the substantial majority of concessions-related revenues are located. Your market area may be different for different types of concessions.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of ACDBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining the evidence available to you. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the FAA.

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

(2) *Use an Active Participants List.* Determine the number of ACDBEs that have participated or attempted to participate in your airport concessions program in previous years. Determine the number of all businesses that have participated or attempted to participate in your airport concession program in previous years. Divide the number of ACDBEs who have participated or attempted to participate by the number for all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

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

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

(5) *Alternative methods.* (i) You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of ACDBEs in your market area.

(ii) In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services. In this case, you would calculate your car rental overall goal by dividing the estimated dollar value of such purchases from ACDBEs by the total estimated dollar value of all purchases to be made by car rental companies.

(d) *Step 2.* Once you have calculated a base figure, you must examine all relevant evidence reasonably available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include, but are not limited to:

(i) The current capacity of ACDBEs to perform work in your concessions program, as measured by the volume of work ACDBEs have performed in recent years; and

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

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

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

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

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

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

(5) Among the information you submit with your overall goal (see 23.45(e)), you must include description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures,

respectively (see §§26.51(c)).

(e) You are not required to obtain prior FAA concurrence with your overall goal (*i.e.* , with the number itself). However, if the FAA's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the FAA may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

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

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

(2) Avoid imposing undue burdens on non-ACDBEs.

§ 23.53 How do car rental companies count ACDBE participation toward their goals?

(a) As a car rental company, you may, in meeting the goal the airport has set for you, include purchases or leases of vehicles from any vendor that is a certified ACDBE.

(b) As a car rental company, if you choose to meet the goal the airport has set for you by including purchases or leases of vehicles from an ACDBE vendor, you must also submit to the recipient documentation of the good faith efforts you have made to obtain ACDBE participation from other ACDBE providers of goods and services.

(c) While this part does not require you to obtain ACDBE participation through direct ownership arrangements, you may count such participation toward the goal the airport has set for you.

(d) The following special rules apply to counting participation related to car rental operations:

(1) Count the entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) Count the entire amount of the fee or commission charged by a ACDBE to manage a car rental concession under an agreement with the concessionaire toward ACDBE goals, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) Do not count any portion of a fee paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty.

(e) For other goods and services, count participation toward ACDBE goals as provided in part 26, §26.55 and §23.55 of this part. In the event of any conflict between these two sections, §23.55 controls.

(f) If you have a national or regional contract, count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract. Use the proportion of your applicable gross receipts as the basis for making this pro-rated assignment of ACDBE participation.

Example to paragraph (f): Car Rental Company X signs a regional contract with an ACDBE car dealer to supply cars to all five airports in a state. The five airports each account for 20 percent of X's gross receipts in the state. Twenty percent of the value of the cars purchased through the ACDBE car dealer would count toward the goal of each airport.

§ 23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

(a) You count only ACDBE participation that results from a commercially useful function. For purposes of this part, the term commercially useful function has the same meaning as in part 26, §26.55(c), except that the requirements of §26.55(c)(3) do not apply to concessions.

(b) Count the total dollar value of gross receipts an ACDBE earns under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE toward the goal. However, if the ACDBE enters into a subconcession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.

(c) When an ACDBE performs as a subconcessionaire or subcontractor for a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE under its subagreement.

(d) When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals.

(e) Count the entire amount of fees or commissions charged by an ACDBE firm for a *bona fide* service, provided that, as the recipient, you determine this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.

(f) Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. For purposes of this part, the term manufacturer has the same meaning as in part 26, §26.55(e)(1)(ii).

(g) Count 100 percent of the cost of goods purchased or leased from a ACDBE regular dealer. For purposes of this part, the term "regular dealer" has the same meaning as in part 26, §26.55(e)(2)(ii).

(h) Count credit toward ACDBE goals for goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer as follows:

(1) Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

(2) Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves.

(i) If a firm has not been certified as an ACDBE in accordance with the standards in this part, do not count the firm's participation toward ACDBE goals.

(j) Do not count the work performed or gross receipts earned by a firm after its eligibility has been removed toward ACDBE goals. However, if an ACDBE firm certified on April 21, 2005 is decertified because one or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds business size standards of this part during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement (but not extensions or renewals of such contracts or agreements).

(k) Do not count costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "build-out").

(l) Do not count the ACDBE participation of car rental companies toward your ACDBE achievements toward this goal.

§ 23.57 What happens if a recipient falls short of meeting its overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this part, simply because your ACDBE participation falls short of your overall goals. You can be penalized or treated as being in noncompliance only if you have failed to administer your ACDBE program in good faith.

(b) If your ACDBE participation falls short of your overall goals, FAA may require you to submit to the FAA a statement of the reasons why you were unable to meet it and the steps you are taking to meet your overall goals or to adjust them based on changed circumstances.

(c) In response to your submission, FAA may require you to implement appropriate remedial measures,

§ 23.59 What is the role of the statutory 10 percent goal in the ACDBE program?

(a) The statute authorizing the ACDBE program provides that, except to the extent the Secretary determines otherwise, not less than 10 percent of concession businesses are to be ACDBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in airport concessions.

(c) The national 10 percent aspirational goal does not authorize or require recipients to set overall or concession-specific goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

§ 23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?

You must not use quotas or set-asides for ACDBE participation in your program.

Subpart E—Other Provisions

§ 23.71 Does a recipient have to change existing concession agreements?

Nothing in this part requires you to modify or abrogate an existing concession agreement (one executed before April 21, 2005) during its term. When an extension or option to renew such an agreement is exercised, or when a material amendment is made, you must assess potential for ACDBE participation and may, if permitted by the agreement, use any means authorized by this part to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

§ 23.73 What requirements apply to privately-owned or leased terminal buildings?

(a) If you are a recipient who is required to implement an ACDBE program on whose airport there is a privately-owned or leased terminal building that has concessions, or any portion of such a building, this section applies to you.

(b) You must pass through the applicable requirements of this part to the private terminal owner or lessee via your agreement with the owner or lessee or by other means. You must ensure that the terminal owner or lessee complies with the requirements of this part.

(c) If your airport is a primary airport, you must obtain from the terminal owner or lessee the goals and other elements of the ACDBE program required under this part. You must incorporate this information into your concession plan and submit it to the FAA in accordance with this part.

(d) If the terminal building is at a non-primary commercial service airport or general aviation airport or reliever airport, you must ensure that the owner complies with the requirements in §23.21(e).

§ 23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?

(a) Except as provided in paragraph (b) of this section, you must not enter into long-term, exclusive agreements for concessions. For purposes of this section, a long-term agreement is one having a term longer than five years.

(b) You may enter into a long-term, exclusive concession agreement only under the following conditions:

(1) Special local circumstances exist that make it important to enter such agreement, and

(2) The responsible FAA regional office approves your plan for meeting the standards of paragraph (c) of this section.

(c) In order to obtain FAA approval of a long-term-exclusive concession agreement, you must submit the following information to the FAA regional office:

(1) A description of the special local circumstances that warrant a long-term, exclusive agreement.

(2) A copy of the draft and final leasing and subleasing or other agreements. This long-term, exclusive agreement must provide that:

(i) A number of ACDBEs that reasonably reflects their availability in your market area, in the absence of discrimination, to do the types of work required will participate as concessionaires throughout the term of the agreement and account for at a percentage of the estimated annual gross receipts equivalent to a level set in accordance with §§23.47 through 23.49 of this part.

(ii) You will review the extent of ACDBE participation before the exercise of each renewal option to consider whether an increase or decrease in ACDBE participation is warranted.

(iii) An ACDBE concessionaire that is unable to perform successfully will be replaced by another ACDBE concessionaire, if the remaining term of the agreement makes this feasible. In the event that such action is not feasible, you will require the concessionaire to make good faith efforts during the remaining term of the agreement to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the concessionaire.

(3) Assurances that any ACDBE participant will be in an acceptable form, such as a sublease, joint venture, or partnership.

(4) Documentation that ACDBE participants are properly certified.

(5) A description of the type of business or businesses to be operated (e.g., location, storage and delivery space, "back-of-the-house facilities" such as kitchens, window display space, advertising space, and other amenities that will increase the ACDBE's chance to succeed).

(6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE.

(7) Information on the estimated gross receipts and net profit to be earned by the ACDBE.

§ 23.77 Does this part preempt local requirements?

(a) In the event that a State or local law, regulation, or policy differs from the requirements of this part, the recipient must, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of this part.

(b) You must clearly identify any State or local law, regulation, or policy pertaining to minority, women's, or disadvantaged business enterprise concerning airport concessions that adds to, goes beyond, or imposes more stringent requirements than the provisions of this part. FAA will determine whether such a law, regulation, or policy conflicts with this part, in which case the requirements of this part will govern.

(c) If not deemed in conflict by the FAA, you must write and administer such a State or local law, policy, or regulation separately from the ACDBE program.

(d) You must provide copies of any such provisions and the legal authority supporting them to the FAA with your ACDBE program submission. FAA will not approve an ACDBE program if there are such provisions that conflict with the provisions of this part.

(e) However, nothing in this part preempts any State or local law, regulation, or policy enacted by the governing body of a recipient, or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with this part.

§ 23.79 Does this part permit recipients to use local geographic preferences?

No. As a recipient you must not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives an ACDBE located in one place (e.g., your local area) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

Appendix A to Part 23—Uniform Report of ACDBE Participation

Instructions for Uniform Report of ACDBE Participation

1. Insert name of airport receiving FAA financial assistance and AIP number.
2. Provide the name and contact information (phone, fax, e-mail) for the person FAA should contact with questions about the report.
- 3a. Provide the annual reporting period to which the report pertains (e.g., October 2005–September 2006).
- 3b. Provide the date on which the report is submitted to FAA.
4. This block and blocks 5 and 6 concern *non-car rental* goals and participation only. In this block, provide the overall non-car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.
5. For purposes of this block and blocks 6, 8, and 9, the participation categories listed at the left of the block are the following: "Prime Concessions" are concessions who have a direct relationship with the airport (e.g., a company who has a lease agreement directly with the airport to operate a concession). A "subconcession" is a firm that has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession at the airport. A "management contract" is an agreement between the airport and a firm to manage a portion of the airport's facilities or operations (e.g., manage the parking facilities). "Goods/services" refers to those goods and services purchased by the airport itself or by concessionaires and management contractors from certified DBEs.

Block 5 concerns *all* non-car rental concession activity covered by 49 CFR part 23 during the reporting period, both new or continuing.

In Column A, enter the total concession gross revenues for concessionaires (prime and sub) and purchases of goods and services (ACDBE and non-ACDBE combined) at the airport. In Column B, enter the number of lease agreements, contracts, etc. in effect or taking place during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBE and non-ACDBE combined).

Because, by statute, non-ACDBE management contracts do not count as part of the base for ACDBE goals, the cells for total management contract participation and ACDBE participation as a percentage of total management contracting dollars are not intended to be filled in blocks 5, 6, 8, and 9.

In Column C, enter the total gross revenues in each participation category (ACDBEs) only. In Column D, enter the number of lease

agreements, contracts, etc., in effect or entered into during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBEs only).

Columns E and F are subsets of Column C: break out the total gross revenues listed in Column C into the portions that are attributable to race-conscious and race-neutral measures, respectively. Column G is a percentage calculation. It answers the question, what percentage of the numbers in Column A is represented by the corresponding numbers in Column C?

6. The numbers in this Block concern only *new* non-car rental concession opportunities that arose during the current reporting period. In other words, the information requested in Block 6 is a subset of that requested in Block 5. Otherwise, this Block is filled out in the same way as Block 5.

7. Blocks 7–9 concern car rental goals and participation. In Block 7, provide the overall car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.

8. Block 8 is parallel to Block 5, except that it is for car rentals. The instructions for filling it out are the same as for Block 5.

9. Block 9 is parallel to Block 6, except that it is for car rentals. The information requested in Block 9 is a subset of that requested in Block 8. The instructions for filling it out are the same as for Block 6.

10. Block 10 instructs recipients to bring forward the cumulative ACDBE participation figures from Blocks 5 and 8, breaking down these figures by race and gender categories. Participation by non-minority women-owned firms should be listed in the "non-minority women" column. Participation by firms owned by minority women should be listed in the appropriate minority group column. The "other" column should be used to reflect participation by individuals who are not a member of a presumptively disadvantaged group who have been found disadvantaged on a case-by-case basis.

11. This block instructs recipients to attach five information items for each ACDBE firm participating in its program during the reporting period. If the firm's participation numbers are reflected in Blocks 5–6 and/or 8–9, the requested information about that firm should be attached in response to this item.

Uniform Report of ACDBE Participation

1. Name of Recipient and AIP Number:

2. Contact Information:

3a. Reporting Period:

3b. Date of Report:

4. Current Non-Car Rental ACDBE Goal: Race Conscious Goal ___% Race Neutral Goal ___% Overall Goal ___%

5. Non-car rental Cumulative ACDBE participation	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions							
Subconcessions							
Management Contracts	XXXXXXX	XXXXXXX					XXXXXX
Goods/Services							
Totals							
6. Non-Car rental New ACDBE participation this period	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions							
Subconcessions							
Management Contracts	XXXXXXX	XXXXXXX				XXXXXX	
Goods/Services							
Totals							

7. Current Car Rental ACDBE Goal: Race Conscious Goal ___% Race Neutral Goal ___% Overall Goal ___%

8. Car rental Cumulative ACDBE participation	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs	
Prime Concessions								
Subconcessions								
Goods/Services								
Totals								
9. Car rental New ACDBE participation this period	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs	
Prime Concessions								
Subconcessions								
Goods/Services								
Totals								
10. Cumulative ACDBE participation by race/gender	A Black Americans	B Hispanic Americans	C Asian-Pacific Americans	D Asian-Indian Americans	E Native Americans	F Non-minority Women	G Other	H Totals
Car Rental								
Non-Car Rental								
Totals								

11. On an attachment, list the following information for each ACDBE firm participating in your program during the period of this report: (1) Firm name; (2) Type of business; (3) Beginning and expiration dates of agreement, including options to renew; (4)

Dates that material amendments have been or will be made to agreement (if known); (5) Estimated gross receipts for the firm during this reporting period.

Title 49: Transportation

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

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Authority: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.* ; 49 U.S.C. 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105-178, 112 Stat. 107, 113.

Source: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

Subpart A—General

§ 26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (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 assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (g) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

§ 26.3 To whom does this part apply?

(a) If you are a recipient of any of the following types of funds, this part applies to you:

(1) 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.

(2) 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.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

§ 26.5 What do the terms used in this part mean?

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

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

(i) One concern controls or has the power to control the other; or

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

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

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

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

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

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

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

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

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

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

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT

financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Recipient is any entity, public or private, to which DOT financial assistance is extended, whether directly or through another

recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance.

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

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

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

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

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

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

(1) Any individual who a recipient 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 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 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.

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

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

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003; 76 FR 5096, Jan. 28, 2011]

§ 26.7 What discriminatory actions are forbidden?

(a) You must never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract covered by this part on the basis of race, color, sex, or national origin.

(b) In administering your **DBE** program, you must not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

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

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

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

[72 FR 15617, Apr. 2, 2007]

§ 26.11 What records do recipients keep and report?

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

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

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

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

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

(i) Firm name;

(ii) Firm address;

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

(iv) Age of the firm; and

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

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

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 76 FR 5096, Jan. 28, 2011]

§ 26.13 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its **DBE** program or the requirements 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 sanctions 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) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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

§ 26.15 How can recipients apply for exemptions or waivers?

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

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

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

(2) Your application must show that—

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

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

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

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

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your **DBE** program as provided in your proposal, subject to the following conditions:

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

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

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

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

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

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

§ 26.21 Who must have a DBE program?

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

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

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

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts exceeding \$250,000 in FAA funds in a Federal fiscal year.

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

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

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

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

§ 26.23 What is the requirement for a policy statement?

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

§ 26.25 What is the requirement for a liaison officer?

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

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

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

§ 26.29 What prompt payment mechanisms must recipients have?

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

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

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

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

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

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

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

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

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and

subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

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

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

[68 FR 35553, June 16, 2003]

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

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

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

[76 FR 5096, Jan. 28, 2011]

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011]

§ 26.39 Fostering small business participation.

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

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

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

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

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

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

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

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

[76 FR 5097, Jan. 28, 2011]

Subpart C—Goals, Good Faith Efforts, and Counting

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

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients to set overall or contract goals at the 10 percent level, or any other particular level, or to take any special administrative steps if their goals are above or below 10 percent.

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

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

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

discrimination.

§ 26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for **DBE** participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing **DBE** program, it must remain in effect and you must seek to fulfill the objectives outlined in §26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of **DBE** participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past **DBE** participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

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

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted on your DOT-assisted prime contracts or subcontracts in the previous year. Determine the number of all businesses that have bid or quoted on prime or subcontracts in the same time period. Divide the number of **DBE** bidders and quoters by the number for all businesses to derive a base figure for the relative availability of DBEs in your market.

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

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

(5) *Alternative methods.* You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request

the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

- (i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and
- (ii) Avoid imposing undue burdens on non-DBEs.

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

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

(g) In establishing an overall goal, you must provide for public participation. This public participation must include:

(1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs.

(2) A published notice announcing your proposed overall goal, informing the public that the proposed goal and its rationale are available for inspection during normal business hours at your principal office for 30 days following the date of the notice, and informing the public that you and the Department will accept comments on the goals for 45 days from the date of the notice. The notice must include addresses to which comments may be sent, and you must publish it in general circulation media and available minority-focused media and trade association publications.

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

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

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

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

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

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

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

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

(3)(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

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

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

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

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

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

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

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

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

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

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

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal. In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying §26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will perform during the fiscal year in question. You must exclude from this base funds attributable to work performed outside the United States and its territories, possessions, and commonwealths. The requirements and procedures of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) As a transit vehicle manufacturer, you may make the certification required by this section if you have submitted the goal this section requires and FTA has approved it or not disapproved it.

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

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

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

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating **DBE** participation. 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).

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

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

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

(3) Providing technical assistance and other services;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Example to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent **DBE** participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of **DBE** goals. By September, you have already obtained 11 percent **DBE** participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent **DBE** participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during

the remainder of the year in order to achieve your overall goal.

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

Example to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The **DBE** participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional **DBE** participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your **DBE** participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

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

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

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

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

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

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

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

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

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

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

(2) All bidders/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;

(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;

(v) Written confirmation from the **DBE** that it is participating in the contract as provided in the prime contractor's commitment; and

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part); and

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

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

(ii) At any time before you commit yourself to the performance of the contract by the bidder/offeror, as a matter of responsibility.

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

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

(1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

(e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1) You must require that a prime contractor not terminate a **DBE** subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute **DBE** firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a **DBE** subcontractor with its own forces or those of an affiliate, a non-**DBE** firm, or with another **DBE** firm.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the **DBE** firm.

(3) For purposes of this paragraph, good cause includes the following circumstances:

(i) The listed **DBE** subcontractor fails or refuses to execute a written contract;

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

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

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

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

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

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

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

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

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

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

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

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

(g) When a **DBE** subcontractor is terminated, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another **DBE** subcontractor to substitute for the original **DBE**. These good faith efforts shall be directed at finding another **DBE** to perform at least the same amount of work under the contract as the **DBE** that was terminated, to the extent needed to meet the contract goal you established for the procurement.

(h) You must include in each prime contract a provision for appropriate administrative remedies that you will invoke if the prime contractor fails to comply with the requirements of this section.

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

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

§ 26.55 How is DBE participation counted toward goals?

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

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

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

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

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

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

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

(2) A **DBE** does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction,

contract, or project through which funds are passed in order to obtain the appearance of **DBE** participation. In determining whether a **DBE** is such an extra participant, you must examine similar transactions, particularly those in which **DBEs** do not participate.

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

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

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

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

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

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

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

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

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

Example to this paragraph (d)(5): **DBE** Firm X uses two of its own trucks on a contract. It leases two trucks from **DBE** Firm Y and six trucks from non-**DBE** Firm Z. **DBE** credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, **DBE** credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

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

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

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

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

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

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

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its

own name, in the purchase and sale or lease of the products in question.

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

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

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

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

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

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

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

Subpart D—Certification Standards

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

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

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

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

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

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

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

§ 26.63 What rules govern group membership determinations?

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

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

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

(b) In making such a determination, you must consider whether the person has held himself out to be a member of the group over a

long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. You may require the applicant to produce appropriate documentation of group membership.

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

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

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

§ 26.65 What rules govern business size determinations?

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

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible **DBE** in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$22.41 million.

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

[74 FR 15224, Apr. 3, 2009]

§ 26.67 What rules determine social and economic disadvantage?

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

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

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. This statement and documentation must not be unduly lengthy, burdensome, or intrusive.

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

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

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm).

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

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

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

(b) *Rebuttal of presumption of disadvantage.* (1) If the statement of personal net worth that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should

be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

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

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

(c) [Reserved]

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

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35554, June 16, 2003; 76 FR 5099, Jan. 28, 2011]

§ 26.69 What rules govern determinations of ownership?

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

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

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

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

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

(c) The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

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

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

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

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

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

acquire ownership:

(1) The owner's expertise must be—

(i) In a specialized field;

(ii) Of outstanding quality;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on

financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or

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

§ 26.71 What rules govern determinations concerning control?

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

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

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

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

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

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

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

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

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

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

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

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

(f) The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

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

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

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

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

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

(k)(1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

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

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

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

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

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

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

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

requirements of this paragraph (a)(1) by August 28, 2011.

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

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

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

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

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

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

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5099, Jan. 28, 2011]

§ 26.73 What are other rules affecting certification?

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

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

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

(2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.

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

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

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

(1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established

for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

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

Example 1: Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

Example 2: Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

Example 3: Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

Example 4: Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

Example 5: Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

Example 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

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

(g) You must not require a **DBE** firm to be prequalified as a condition for certification unless the recipient requires all firms that participate in its contracts and subcontracts to be prequalified.

(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 §26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

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

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

(i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;

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

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

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

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

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5099, Jan. 28, 2011]

Subpart E—Certification Procedures

§ 26.81 What are the requirements for Unified Certification Programs?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

year.

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

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

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

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

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

(c) You must take all the following steps in determining whether a **DBE** firm meets the standards of subpart D of this part:

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

(2) If the firm is a corporation, analyze the ownership of stock in the firm;

(3) Analyze the bonding and financial capacity of the firm;

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

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

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

(7) Require potential DBEs to complete and submit an appropriate application form, unless the potential **DBE** is an SBA certified firm applying pursuant to the DOT/SBA MOU.

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

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

(iii) You must review all information on the form prior to making a decision about the eligibility of the firm.

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

(e) [Reserved]

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

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

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

jobsites.

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

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

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

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

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

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

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

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

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5100, Jan. 28, 2011]

§ 26.85 Interstate certification.

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

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

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

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

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

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

(2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an

applicant or certified **DBE** in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.

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

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

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

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

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

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

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

(i) Evidence that State A's certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

(iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;

(iv) The State law of State B requires a result different from that of the State law of State A.

(v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.

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

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

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

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

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

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

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

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

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

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

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

(i) The name of the firm;

(ii) The name(s) of the firm's owner(s);

(iii) The type and date of the action;

(iv) The reason for the action.

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

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

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

[76 FR 5100, Jan. 28, 2011]

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

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

(b) When you deny DBE certification to a firm certified by the SBA, you must notify the SBA in writing. The notification must include the reason for denial.

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm.

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

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003]

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

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

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

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination

and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

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

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

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

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

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

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

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

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

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

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

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

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

(f) *Grounds for decision.* You must not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. You may base such a decision only on one or more of the following:

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

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

(3) Information 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 you certified the firm; or

(5) A documented finding that your determination to certify the firm was factually erroneous.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the

firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding.

(h) [Reserved]

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

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

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

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

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

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

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

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

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

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

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

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

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

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and arguments concerning why the recipient's decision should be reversed. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal.

(1) If you are an appellant who is a firm which has been denied certification, whose certification has been removed, whose owner is determined not to be a member of a designated disadvantaged group, or concerning whose owner the presumption of disadvantage has been rebutted, your letter must state the name and address of any other recipient which currently certifies the firm, which has rejected an application for certification from the firm or removed the firm's eligibility within one year prior to the date of the appeal, or before which an application for certification or a removal of eligibility is pending. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).

(2) If you are an appellant other than one described in paragraph (c)(1) of this section, the Department will request, and the firm whose certification has been questioned shall promptly provide, the information called for in paragraph (c)(1) of this section. Failure to provide this information may be deemed a failure to cooperate under §26.109(c).

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's

request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Subpart F—Compliance and Enforcement

§ 26.101 What compliance procedures apply to recipients?

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

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

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

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

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

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

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

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

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

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

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

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

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

§ 26.105 What enforcement actions apply in FAA programs?

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract, a bidder must, in order to be responsible and/or responsive, make good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by **DBE** firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a **DBE** goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient **DBE** participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, it is up to you to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain **DBE** participation sufficient to meet the **DBE** contract goal. Mere *pro forma* efforts are not good faith efforts to meet the **DBE** contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call: meeting quantitative formulas is not required.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of **DBE** participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring *bona fide* good faith efforts.

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

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

B. Selecting portions of the work to be performed by **DBEs** in order to increase the likelihood that the **DBE** goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate **DBE** participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.

C. Providing interested **DBEs** with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.

D. (1) Negotiating in good faith with interested **DBEs**. It is the bidder's responsibility to make a portion of the work available to **DBE** subcontractors and suppliers and to select those portions of the work or material needs consistent with the available **DBE** subcontractors and suppliers, so as to facilitate **DBE** participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of **DBEs** that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for **DBEs** to perform the work.

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

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

F. Making efforts to assist interested **DBEs** in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.

G. Making efforts to assist interested **DBEs** in obtaining necessary equipment, supplies, materials, or related assistance or services.

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

V. In determining whether a bidder has made good faith efforts, you may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

1. Indicate the DOT Operating Administration (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.
2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If more than six, attach a separate sheet.
3. Specify the Federal fiscal year (i.e., October 1 - September 30) in which the covered reporting period falls.
4. State the date of submission of this report.
5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. If this report is due June 1, data should cover October 1 - March 31. If this report is due December 1, data should cover April 1 - September 30. If this report is due to the FAA, data should cover the entire year.
6. Name of the recipient.
7. State your annual DBE goal(s) established for the Federal fiscal year of this report to be submitted to and approved by the relevant OA. Your Overall Goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral Goals (both of which include gender-conscious/neutral goals). The Race Conscious Goal portion should be based on programs that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a Race Conscious measure. The Race Neutral Goal portion should include programs that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.
- 8-9. The amounts in items 8(A)-9(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services; construction; purchase of materials or supplies; lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.
- 8(A). Provide the total dollar amount for all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(B). Provide the total number of all prime contracts assisted with DOT funds that were awarded during this reporting period.
- 8(C). From the total dollar amount awarded in item 8(A), provide the dollar amount awarded to certified DBEs during this reporting period.
- 8(D). From the total number of prime contracts awarded in item 8(B), specify the number awarded to certified DBEs during this reporting period.
- 8(E). From the total dollars awarded in 8(C), provide the dollar amount awarded to DBEs through the use of Race Conscious methods. See the definition of Race Conscious Goal in item 7 and the explanation of project types in item 8 to include in your calculation.
- 8(F). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Conscious methods.
- 8(G). From the total dollar amount awarded in item 8(C), provide the dollar amount awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral Goal in item 7 and the explanation of project types in item 8 to include in item 8 to include.
- 8(H). From the total number of prime contracts awarded in 8(D), specify the number awarded to DBEs through Race Neutral methods.
- 8(I). Of all prime contracts awarded this reporting period, calculate the percentage going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.
- 9(A)-9(I). Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.
- 10(A)-11(I). For all DBEs awarded prime contracts and awarded or committed subcontracts as indicated in 8(C)-(D) and 9(C)-(D), break the data down further by total dollar amount as well as the number of all contracts going to each ethnic group as well as to non-minority women. The "Other" category includes those DBEs who are not members of the presumptively disadvantaged groups already listed, but who are determined eligible for the DBE program on an individual basis (e.g. a Caucasian male with a disability). The TOTALS value in 10(I) should equal the sum of 8(C) plus 9(C), and similarly, the TOTALS value in 11(I) should equal the sum of 8(D) plus 9(D). Column I should only be filled out if this report is due on December 1, as indicated in item 5. The values for this column are derived by adding the values reported in column H in your first report with the values reported in this second report.
- 12(A). Provide the total number of prime contracts completed during this reporting period that had Race Conscious goals. Race Conscious contracts are those with contract goals or another Race Conscious measure.
- 12(B). Provide the total dollar value of prime contracts completed this reporting period that had Race Conscious goals.
- 12(C). Provide the total dollar amount of DBE participation on all Race Conscious prime contracts completed this reporting period that was necessary to meet the contract goals on them. This applies only to Race Conscious prime contracts.
- 12(D). Provide the actual total DBE participation in dollars on the race conscious prime contracts completed this reporting period.
- 12(E). Of all the prime contracts completed this reporting period, calculate the percentage of DBE participation. Divide the actual total dollar amount in 12(D) by the total dollar value provided in 12(B) to derive this percentage. Round to the nearest tenth.
- 13(A)-13(E). Items 13(A)-13(E) are derived in the same manner as items 12(A)-12(E), except these figures should be based on Race Neutral prime contracts (i.e. those with no race conscious measures).
- 14(A)-14(E). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
15. Name of the Authorized Representative preparing this form.
16. Signature of the Authorized Representative.
17. Phone number of the Authorized Representative.
18. Fax number of the Authorized Representative.

**Submit your completed report to your Regional or Division Office.

UNIFORM REPORT OF DBE AWARDS OR COMMITMENTS AND PAYMENTS

Please refer to the instructions sheet for directions on filling out this form

1. Submitted to check only: FHWA IFAA IFTA-Vendor Number

2. AIF Number (FAA recipients only):

3. Federal fiscal year in which reporting period ends: FY

4. Date This Report Sub-Total: Report due Dec. 1 for period April 1-Sept. 30
 Report due June 1 for period Oct. 1-March 31
 FAA Annual Report

5. Name of Recipient:

6. Annual DBE Goal: %

7. Race Conscious Goal: %

8. Race Neutral Goal: %

9. Overall Goal: %

	Race Conscious Goal		Race Neutral Goal		Overall Goal		Total to DBE/Race Neutral (number)	Total to DBE/Race Conscious (dollars)	Total to DBE/Race Neutral (dollars)	Total to DBE/Race Conscious (number)	Total to DBE/Race Neutral (number)	Percentage of total dollars to DBEs
	A	B	C	D	E	F						
AWARDS/COMMITMENTS DURING THIS REPORTING PERIOD (All contracts awarded by recipient reporting period, including those awarded by other agencies)	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 Conscious (dollars)	Total to DBEs/Race Conscious (number)	Total to DBEs/Race Neutral (number)	Total to DBEs/Race Neutral (number)	Percentage of total dollars to DBEs
1. Prime contracts awarded this period												
2. Subcontracts awarded/committed this period												
TOTAL												
DBE AWARDS/COMMITMENTS REPORTING PERIOD BREAKDOWN BY ETHNICITY & GENDER	A	B	C	D	E	F	G	H	I	J	K	L
10. Total Number of Contracts (Prime and Sub)	Black American	Hispanic American	Native American	Subcont. Asian American	Asian Pacific American	Non-Minority Women	Other (i.e., not of any other group listed here)	TOTALS (for this reporting period only)				
11. Total Dollar Value												
COMMITMENTS/CONTRACTS COMPLETED DURING REPORTING PERIOD	A		B		C		D		E		F	
13. DBE Contracts	Number of Prime Contracts Completed	Total Dollar Value of Prime Contracts Completed	DSE Participation Needed to Meet Goal (Dollars)	DSE Participation (Dollars)	Total DBE Participation (Dollars)	Percentage of Total DBE Participation						
14. Totals												

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003]

Appendix C to Part 26—DBE Business Development Program Guidelines

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the recipient.

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program

benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the **DBE** program.

(D) The business plan should contain at least the following:

(1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.

(2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of **DBE** participation.

(3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;

(4) Estimates of contract awards from the **DBE** program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and

(5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

(1) The aggregate dollar value of contracts to be sought under the **DBE** program, reflecting compliance with the business plan;

(2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of **DBE** participation;

(3) The types of contract opportunities being sought, based on the firm's primary line of business; and

(4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of **DBE** participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

(J) When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:

-
- (1) Profitability;
 - (2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
 - (3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
 - (4) Ability to obtain bonding;
 - (5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
 - (6) Good management capacity and capability.

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

(M) Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.

Appendix D to Part 26—Mentor-Protégé Program Guidelines

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

Social Disadvantage

I. Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. 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.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their **DBE** programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

Economic Disadvantage

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose 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 disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

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

(2) Recipients 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.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

Appendix F to Part 26—Uniform Certification Application Form

INSTRUCTIONS FOR COMPLETING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM UNIFORM CERTIFICATION APPLICATION

NOTE: 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. Prior/Other Certifications

Check the appropriate box indicating for which program your firm is currently certified. If you are already certified as a DBE, indicate in the appropriate box the name of the certifying agency that has previously certified your firm, and also indicate whether your firm has undergone an onsite visit. If your firm has already undergone an onsite visit/review, indicate the most recent date of that review and the state UCP that conducted the review.

NOTE: If your firm is currently certified under the SBA's 8(a) and/or SDB programs, you may not have to complete this application. You should contact your state UCP to find out about a streamlined application process for firms that are already certified under the 8(a) and SDB programs.

B. Prior/Other Applications and Privileges

Indicate whether your firm or any of the persons listed has ever withdrawn an application for a DBE program or an SBA 8(a) or SDB program, or whether any have ever been denied certification, de-certified, debarred, suspended, or had bidding privileges denied or restricted by any state or local agency or Federal entity. If your answer is yes, indicate the date of such action, identify the name of the agency, and explain fully the nature of the action in the space provided.

Section 2: GENERAL INFORMATION

A. Contact Information

- (1) State the name and title of the person who will serve as your firm's primary contact under this application.
- (2) State the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) State the primary phone number of your firm.
- (4) State a secondary phone number, if any.
- (5) State your firm's fax number, if any.
- (6) State your firm's or your contact person's email address.
- (7) State your firm's website address, if any.
- (8) State the street address of your firm (i.e., the physical location of its offices — not a post office box address).
- (9) State the mailing address of your firm, if it is different from your firm's street address.

B. Business Profile

- (1) In the box provided, briefly describe the primary business and professional activities in which your firm engages.
- (2) State the Federal Tax ID number of your firm as provided on your firm's filed tax returns, if you have one. This could also be the Social Security number of the owner of your firm.
- (3) State the date on which your firm was officially established, as stated in your firm's Articles of Incorporation or charter.

(4) State the date on which you and/or each other owner took ownership of the firm.

(5) Check the appropriate box that describes 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."

NOTE: If you checked "No," then you do NOT qualify for the DBE program and therefore do not need to complete the rest of this application. The DBE program requires all participating firms be for-profit enterprises.

(7) Check the appropriate box that describes the legal form of ownership of your firm, as indicated in your firm's Articles of Incorporation or charter. If you checked "Other," briefly explain in the space provided.

(8) Check the appropriate box that indicates whether your firm has ever existed under different ownership, a different type of ownership, or a different name. If you checked "Yes," specify which and briefly explain the circumstances in the space provided.

(9) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time and part-time basis.

(10) Specify the total gross receipts of your firm for each of the past three years, as declared in your firm's filed tax returns.

C. Relationships 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, or any office staff with any other business, organization, or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and briefly explain the nature of the shared facilities or other items in the space provided.

(2) Check the appropriate box that indicates whether at present, or at any time in the past:

(a) Your firm has been a subsidiary of any other firm;

(b) Your firm consisted of a partnership in which one or more of the partners are other firms;

(c) Your firm has owned any percentage of any other firm; and

(d) Your firm has had any subsidiaries of its own.

(3) Check the appropriate box that indicates whether any other firm has ever had an ownership interest in your firm.

- (4) If you answered "Yes" to any of the questions in (2)(a)-(d) or (3), identify the name, address and type of business for each.

D. Immediate Family Member Businesses

Check the appropriate box that indicates whether any of your immediate family members own or manage another company. An "immediate family member" is any person who is your father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law. If you answered "Yes," provide the name of each relative, your relationship to them, the name of the company they own or manage, the type of business, and whether they own or manage the company.

Section 3: OWNERSHIP

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 additional owner):

A. Background Information

- (1) Give the name of the owner.
- (2) State his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) State his/her home (street) address.
- (5) Check the appropriate box that indicates this owner's gender.
- (6) Check the appropriate box that indicates this owner's ethnicity (check all that apply). 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.
- (8) If this owner is not a U.S. citizen, check the appropriate box that indicates whether this owner is 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. This, however, does not necessarily disqualify your firm altogether from the DBE program if another owner is a U.S. citizen or lawfully admitted permanent resident and meets the program's other qualifying requirements.

B. Ownership Interest

- (1) State the number of years during which this owner has been an owner of your firm.
- (2) 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.
- (3) State the percentage of total ownership control of your firm that this owner possesses.
- (4) State the familial relationship of this owner to each other owner of your firm.
- (5) Indicate the number, percentage of the total, class, date acquired, and method by which this owner acquired his/her shares of stock in your firm.

- (6) Check the appropriate box that indicates 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 or title held in that business.

- (7) 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 and this owner's function or title held in that business. Briefly describe the nature of the business relationship in the space provided.

C. Disadvantaged Status

NOTE: You only need to complete this section for each owner that is applying for DBE qualification (i.e., for each owner who is claiming to be "socially and economically disadvantaged" and whose ownership interest is to be counted toward the control and 51% ownership requirements of the DBE program)

- (1) Indicate in the space provided the total Personal Net Worth (PNW) of each owner who is applying for DBE qualification. Use the PNW calculator form at the end of this application to compute each owner's PNW.
- (2) Check the appropriate box that indicates whether any trust has ever been created for the benefit of this disadvantaged owner. If you answered "Yes," briefly explain the nature, history, purpose, and current value of the trust(s).

Section 4: CONTROL

A. Identify your 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 of your firm.
- (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 that indicates whether any of your firm's officers and/or directors listed above perform 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. If you answered "Yes," identify the name of the firm, the officer or director, and the nature of his/her business relationship with that other firm.

B. Identify your firm's management personnel (by name, title, ethnicity, and gender) who control your firm in the following areas:

- (1) Making financial decisions on your firm's behalf, including the acquisition of lines of credit, surety bonds, supplies, etc.;
 - (2) Estimating and bidding, including calculation of cost estimates, bid preparation and submission;
 - (3) Negotiating and contract execution, including participation in any of your firm's negotiations and executing contracts on your firm's behalf.
 - (4) Hiring and/or firing of management personnel, including interviewing and conducting performance evaluations;
 - (5) Field/Production operations supervision, including site supervision, scheduling, project management services, etc.;
 - (6) Office management;
 - (7) Marketing and sales;
 - (8) Purchasing of major equipment;
 - (9) Signing company checks (for any purpose); and
 - (10) Conducting any other financial transactions on your firm's behalf not otherwise listed.
- (11) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above perform 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.
- (12) Check the appropriate box that indicates whether any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with your firm. If you answered "Yes," identify the name of the firm, the name of the person, and the nature of his/her business relationship with that other firm.
- C. Indicate your firm's inventory in the following categories:**
- (1) **Equipment**
State the type, make and model, and current dollar value of each piece of equipment held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm.
 - (2) **Vehicles**
State the type, make and model, and current dollar value of each motor vehicle held and/or used by your firm. Indicate whether each vehicle is either owned or leased by your firm.
 - (3) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm owns or leases the office space and the current dollar value of that property or its lease.
 - (4) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm owns or leases the storage space and the current dollar value of that property or its lease.
- 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," briefly explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial Information

(1) **Banking Information**

- (a) State the name of your firm's bank.
- (b) State the main phone number of your firm's bank branch.
- (c) State the address of your firm's bank branch.

(2) **Bonding Information**

- (a) State your firm's Binder Number.
- (b) State the name of your firm's bond agent and/or broker.
- (c) State your agent's/broker's phone number.
- (d) State your agent's/broker's address.
- (e) State your firm's bonding limits (in dollars), specifying both the Aggregate and Project Limits.

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms securing the loan, if other than the listed owner:

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

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners 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. List 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 license or permit, the expiration date of the permit or license, and the license/permit number and issuing State of the license or permit.

I. List the three 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. List the three 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.

AFFIDAVIT & SIGNATURE

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.

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS

① **Should I apply?**

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$17.42 million in gross annual receipts?
- Is your firm organized as a for-profit business?

⇒ If you answered "Yes" to all of the questions above, you may be eligible to participate in the U.S. DOT DBE program.

② **Is there an easier way to apply?**

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form.

NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.

③ **Be sure to attach all of the required documents listed in the Documents Check List at the end of this form with your completed application.**

④ **Where can I find more information?**

- U.S. DOT – <http://osdbweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.ntis.gov/nases> (provides a listing of NAICS codes) and <http://www.sba.gov/size/index/tableofsize.html> (provides a listing of NAICS codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, 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 49 CFR Part 29, Governmentwide Debarment and Suspension (nonprocurement) and Governmentwide Requirements for Drug-free Workplace (grants), take enforcement action under 49 CFR 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.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit? <input type="checkbox"/> Yes, on / / State: <input type="checkbox"/> No
	<input type="checkbox"/> S(a) <input type="checkbox"/> SDB	⊗ STOP! If you checked either the S(a) or SDB box, you may not have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?
 Yes, on / / No
 If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:

Section 2: GENERAL INFORMATION

A. Contact Information

(1) Contact person and Title:		(2) Legal name of firm:			
(3) Phone #:		(4) Other Phone #:		(5) Fax #:	
(6) E-mail:		(7) Website (if have one):			
(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. Business Profile

(1) Describe the primary activities of your firm:		(2) Federal Tax ID (if any):	
(3) This firm was established on / /		(4) I/We have owned this firm since: / /	
(5) Method of acquisition (check all that apply): <input type="checkbox"/> Started new business <input type="checkbox"/> Bought existing business <input type="checkbox"/> Inherited business <input type="checkbox"/> Secured concession <input type="checkbox"/> Merger or consolidation <input type="checkbox"/> Other (explain)			
(6) Is your firm "for profit"? <input type="checkbox"/> Yes <input type="checkbox"/> No		⊗ STOP! If your firm is NOT for-profit, then you do NOT qualify for this program and do NOT need to fill out this application.	

(7) Type of firm (check all that apply):

- Sole Proprietorship
- Partnership
- Corporation
- Limited Liability Partnership
- Limited Liability Corporation
- Joint Venture
- Other, Describe: _____

(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name?
 Yes No
 If Yes, explain: _____

(9) Number of employees: Full-time _____ Part-time _____ Total _____

(10) Specify the gross receipts of the firm for the last 3 years: Year _____ Total receipts \$ _____
 Year _____ Total receipts \$ _____
 Year _____ Total receipts \$ _____

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity?
 Yes No

If Yes, identify Other Firm's name: _____
 Explain nature of shared facilities: _____

(2) At present, or at any time in the past, has your firm:	(a) been a subsidiary of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(b) consisted of a partnership in which one or more of the partners are other firms? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(c) owned any percentage of any other firm? <input type="checkbox"/> Yes <input type="checkbox"/> No
	(d) had any subsidiaries? <input type="checkbox"/> Yes <input type="checkbox"/> No

(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? Yes No

(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (attach extra sheets, if needed):

	Name	Address	Type of Business
1.			
2.			
3.			

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? Yes No

If Yes, then list (attach extra sheets, if needed):

	Name	Relationship	Company	Type of Business	Own or Manage?
1.					
2.					

Section 3: OWNERSHIP

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (If more than one owner, attach separate sheets for each additional owner):

A. Background Information

(1) Name:	(2) Title:	(3) Home Phone #:
(4) Home Address (street and number):		City: State: Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(6) Ethnic group membership (Check all that apply):	
(7) U.S. Citizen: <input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Native American	
(8) Lawfully Admitted Permanent Resident:	<input type="checkbox"/> Asian Pacific <input type="checkbox"/> Subcontinent Asian	
<input type="checkbox"/> Yes <input type="checkbox"/> No	<input type="checkbox"/> Other (specify): _____	

B. Ownership Interest

(1) Number of years as owner:	(2) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
(3) Percentage owned:		Cash	\$
(4) Familial relationship to other owners:		Real Estate	\$
		Equipment	\$
		Other	\$
(5) Shares of Stock:	Number	Percentage	Class
			Date acquired
			Method Acquired
(6) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business:		Function Title:	
(7) 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.)? <input type="checkbox"/> Yes <input type="checkbox"/> No			
If Yes, identify: Name of Business:		Function Title:	
Name of Business Relationship:			

C. Disadvantaged Status – NOTE: Complete this section only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged)

(1) What is the Personal Net Worth (PNW) of the owner(s) applying for DBE qualification? (Use and attach the Personal Net Worth calculator form at the end of this application; attach additional sheets if more than one owner is applying)
(2) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain (attach additional sheets if needed):

Section 4: CONTROL

A. Identify your firm's Officers & 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)				
	(e)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				
	(e)				

(3) Do any of the persons listed in (1) and/or (2) above perform a management or supervisory function for any other business? Yes No

If Yes, identify for each: Person: _____ Title: _____

Business: _____ Function: _____

(4) Do any of the persons listed (1) and/or (2) 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, personal sharing, etc.)? Yes No

If Yes, identify for each: Firm Name: _____ Person: _____

Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions <i>(responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)</i>	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? Yes No
 If Yes, identify for each: Person: _____ Title: _____
 Business: _____ Function: _____

(12) Do any of the persons listed in (1) through (10) 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: _____

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

(1) Equipment

Type of Equipment	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(2) Vehicles

Type of Vehicle	Make/Model	Current Value	Owned or Leased?
(a)			
(b)			
(c)			

(3) Office Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

(4) Storage Space

Street Address	Owned or Leased?	Current Value of Property or Lease
(a)		
(b)		

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

If Yes, explain:

E. Financial Information

(1) Banking Information:

(a) Name of bank: _____ (b) Phone No: () _____
 (c) Address of bank: _____ City: _____ State: _____ Zip: _____

(2) Bonding Information: If you have bonding capacity, identify: (a) Binder No: _____
 (b) Name of agent/broker _____ (c) Phone No: () _____
 (d) Address of agent/broker: _____ City: _____ State: _____ Zip: _____
 (e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm, including the names of any persons or firms securing the loan, if other than the listed owner:

Name of Source	Address of Source	Name of Person Securing 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 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	License Number and 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.					

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE certification, you must attach copies of all of the following documents as they apply to you and your firm.

All Applicants

- Work experience resumes (include places of ownership/employment with corresponding dates), for all owners and officers of your firm
- Personal Financial Statement (form available with this application)
- Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
- Your firm's tax returns (gross receipts) and all related schedules for the past three years
- Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- Your firm's signed loan agreements, security agreements, and bonding forms
- Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- List of equipment leased and signed lease agreements
- List of construction equipment and/or vehicles owned and titles/proof of ownership
- Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- Year-end balance sheets and income statements for the past three years (or life of firm, if less than three years); a new business must provide a current balance sheet
- All relevant licenses, license renewal forms, permits, and haul authority forms
- DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- Bank authorization and signatory cards
- Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm
- Trust agreements held by any owner claiming disadvantaged status, if any

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
- 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)

Trucking Company

- Documented proof of ownership of the company
- Insurance agreements for each truck owned or operated by your firm
- Title(s) and registration certificate(s) for each truck owned or operated by your firm
- List of U.S. DOT numbers for each truck owned or operated by your firm

Regular Dealer

- Proof of warehouse ownership or lease
- List of product lines carried
- List of distribution equipment owned and/or leased

NOTE: The specific state UCP to which you are applying may have additional required documents that you must also supply with your application. Contact the appropriate certifying agency to which you are applying to find out if more is required.

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 applicant firm _____ (firm name) 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 place(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 or subcontract, 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 (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, 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 (DBE). 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) (circle 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 \$750,000, 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.

Executed on _____ (Date)

Signature _____
(DBE Applicant)

NOTARY CERTIFICATE

AGENDA ITEM NO.

COUNCIL MEETING 02/16/12

APPROVED BY _____

DEPARTMENT DIRECTOR _____


CITY MANAGER

February 16, 2012

FROM: KAREN BRADLEY, Assistant Controller
Finance Department 

THROUGH JASON MACDONALD, Manager
Purchasing Division 

BY: BETH MCDONELL, Program Coordinator
DBE Program 

SUBJECT: ADOPT A RESOLUTION REVISING THE DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR FEDERALLY ASSISTED CONTRACTS; AND RESCINDING RESOLUTION 2000-248

RECOMMENDATION

Staff recommends that the City Council approves the attached 2012 Disadvantaged Business Enterprise (DBE) program revised to be in compliance with recent changes to federal regulations.

EXECUTIVE SUMMARY

A condition to the City's receipt of federal financial assistance is the requirement to comply with the DBE requirements set out in Title 49 of the Code of Federal Regulations (CFR) Parts 23 and 26. In order to conform with the recent changes to 49 CFR Parts 23 and 26, Council approval of the attached DBE program is necessary. These changes have been made to foster small business participation in local federally funded contracting. The Airport Department through the Federal Aviation Administration (FAA), the Transportation Department through the Federal Transit Administration (FTA) and Department of Public Works through the Federal Highway Administration (FHWA) all receive federal funds from US Department of Transportation (DOT) subject to this requirement.

BACKGROUND

In August 2000, the City approved a new DBE program to conform with the rules of the US Department of Transportation pursuant to Title 49 of the Code of Federal Regulations (49 CFR, Parts 23 and 26) which applies to projects funded by the Federal Highway Administration (FHWA); Federal Aviation Administration (FAA); and the Federal Transit Administration (FTA). In August 2004, Council amended the program to include a prompt payment clause.

Recent changes were made to the regulations that go into effect on February 28, 2012 adding provisions to foster small business participation. Additional rules improve the administration of the DBE program by increasing accountability for recipients with respect to meeting overall goals, modifying and updating certification requirements, adjusting personal net worth thresholds for inflation and improving post-award oversight.

The accompanying resolution approves and adopts the updated DBE program revised February 2012 and rescinds resolution 2000-248 and 2004-291 under which the currently operative DBE program was adopted and subsequently amended.

FISCAL IMPACT

If Council were to not approve this resolution, the US DOT could eventually reduce or restrict funds received by the City for projects related to transportation.

JBM, 2/3/2012

Attachments:
Resolution for Adoption
Program Manual

RESOLUTION NO. _____

A RESOLUTION OF THE COUNCIL OF THE CITY OF FRESNO ADOPTING A REVISED DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM FOR FEDERALLY ASSISTED CONTRACTS; AND RESCINDING RESOLUTION 2000-248.

WHEREAS, as a public employer, the City of Fresno recognizes that it has a particular responsibility to promote the growth of small businesses, including Disadvantaged Business Enterprises (DBEs); and

WHEREAS, the City of Fresno is a recipient of federal financial assistance from the U.S. Department of Transportation (DOT) operating administrations, Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) and Federal Transit Administration (FTA); and

WHEREAS, as a condition to receiving such assistance, the City of Fresno is required to comply with 49 CFR, Parts 23 and 26, including implementation and of a DBE Program and providing DOT updates representing significant changes in the DBE Program; and

WHEREAS, DOT modified 49 CFR Part 26 in January 2011 necessitating revisions to the current DBE Program adopted by the City pursuant to Resolution 2000-248, which revisions are reflected in the DBE Program revised February 2012; and

WHEREAS, such revisions include a new small business element to facilitate competition by small business concerns which is required to be included in the DBE Program and submitted to the appropriate operating administration(s) by February 28, 2012; and

WHEREAS, 49 CFR Parts 23 and 26 require that the City establish an overall goal every three years for DBE participation in U.S. Department of Transportation (DOT) assisted contracts for incorporation into the Program subject to the schedule established by the respective DOT operating administration; and

WHEREAS, all FHWA funded projects are through the California Department of Transportation (Caltrans) which requires City's DBE Program to include the Caltrans' Disadvantaged Business Enterprise Implementation Agreement for Local Agencies; and

WHEREAS, such Agreement requires the City to establish an annual anticipated DBE participation level (AADPL).

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Fresno as follows:

1. The Council hereby approves and adopts the DBE Program for Federal Projects, revised February 2012.

2. The current overall goals and methodology for establishing the overall DBE goals is set forth in the DBE Program. The overall goals and AADPL are based upon the federal fiscal year which is October 1 through September 30.

3. The DBE Liaison Officer, with the approval of the City Manager, is hereby authorized to amend the DBE Program to reflect any changes to, or establishment of, the overall DBE goals and AADPL by the DBE Liaison Officer; to reflect any changes by the California Department of Transportation to the Disadvantaged Business Enterprise Implementation Agreement for Local Agencies; and to the extent required by any applicable amendment of federal, state or local laws or regulations, including the Code of Federal Regulations modifying DBE Program requirements, which amendment shall become part of the City's DBE Program.

4. The Council hereby rescinds Resolution 2000-248 in its entirety.

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STATE OF CALIFORNIA)
COUNTY OF FRESNO) ss.
CITY OF FRESNO)

I, YVONNE SPENCE, City Clerk of the City of Fresno, certify that the foregoing resolution was adopted by the Council of the City of Fresno, at a regular meeting thereof, held on the ____ day of _____, 2012.

AYES :
NOES :
ABSENT :
ABSTAIN :

Mayor Approval: _____, 2012
Mayor Approval/No Return: _____ 2012
Mayor Veto: _____, 2012
Council Override Vote: _____, 2012

YVONNE SPENCE, CMC
City Clerk

BY: _____
Clerk/Deputy

APPROVED AS TO FORM:
CITY ATTORNEY'S OFFICE

BY: *Nancy A. Algier* *2/7/12*
Nancy A. Algier Date
Senior Deputy

NAA:elb [57972elb/naa] Reso 2/03/12