



AGENDA STAFF REPORT

ASR Control 23-000709

**MEETING DATE:** 09/26/23  
**LEGAL ENTITY TAKING ACTION:** Board of Supervisors  
**BOARD OF SUPERVISORS DISTRICT(S):** 5  
**SUBMITTING AGENCY/DEPARTMENT:** OC Public Works (Pending)  
**DEPARTMENT CONTACT PERSON(S):** James Treadaway (714) 667-9700  
Charlene Reynolds (949) 252-5183

**SUBJECT:** Approve Contract for John Wayne Airport, Taxiways A, D and E Reconstruction

<b>CEO CONCUR</b> Pending Review	<b>COUNTY COUNSEL REVIEW</b> Approved Agreement to Form	<b>CLERK OF THE BOARD</b> Discussion 3 Votes Board Majority
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**Budgeted:** Yes                                      **Current Year Cost:** \$3,413,274                                      **Annual Cost:** N/A  
**Staffing Impact:** No                                      **# of Positions:**                                      **Sole Source:** No  
**Current Fiscal Year Revenue:** N/A  
**Funding Source:** Fund 281: 100%                                      **County Audit in last 3 years:** No  
**Levine Act Review Completed:** Yes  
**Prior Board Action:** N/A

**RECOMMENDED ACTION(S):**

Authorize the Director of OC Public Works or designee to execute a contract with AECOM Technical Services, Inc. for the John Wayne Airport, Taxiways A, D and E Reconstruction, in an amount not to exceed \$3,413,274, for a term of five years, effective upon Board of Supervisors approval.

**SUMMARY:**

Approval of the contract for the John Wayne Airport, Taxiways A, D and E Reconstruction will provide Architect-Engineer consultant services for reconstruction of portions of Taxiways A, D and E to provide for the replacement of aging pavement on critical taxiways and to realign the taxiways to meet Federal Aviation Administration separation guidance between the taxiways and the vehicle service road.

**BACKGROUND INFORMATION:**

John Wayne Airport (JWA), located approximately 35 miles south of Los Angeles, between the cities of Costa Mesa, Irvine and Newport Beach, is owned and operated by the County of Orange (County) and is the only commercial service airport in Orange County. JWA’s service area includes more than three million people within the 34 cities and unincorporated areas of Orange County. In 2022, approximately 11.3 million passengers were served.

The proposed JWA, Taxiways A, D and E Reconstruction (Project) will reconstruct Taxiways A, D and E (Taxiways) east of Runway 2L-20R. The Project will also provide for a slight realignment of Taxiway A just south of the South Remain Over Night apron and associated reconstruction and realignment of the vehicle service road to maintain the separation guidelines along Taxiway A. The reconstruction of the Taxiways measures approximately 2,800 feet (Taxiway A), 250 feet (Taxiway B) and 500 feet (Taxiway E). The length of reconstruction and realignment of the vehicle service road is approximately 3,200 feet adjacent to Taxiway A. Due to the critical nature and location of the Taxiways, careful planning and construction phasing is required, which will maximize safety and minimize impact to JWA operations to the greatest extent possible.

OC Public Works issued a Request for Qualifications (RFQ) for Architect-Engineer services for the Project. The RFQ was advertised from October 11, 2022, through November 8, 2022, on the County online bidding system. Four submittals were received in response to the RFQ. Three submittals were pre-qualified to submit a proposal in response to the County's subsequent Request for Proposals (RFP).

On January 17, 2023, OC Public Works issued an RFP for the Project to the shortlisted respondents. The RFP was advertised on the County online bid system. Three proposals were received and deemed responsive. The evaluation panel composed of members from JWA and OC Public Works scored the responsive proposals. See Attachment D for the Summary of Evaluators' Scoring.

<b><u>Contractors</u></b>	<b><u>Rank</u></b>
AECOM Technical Services, Inc.	1
Kimley-Horn and Associates, Inc.	2
Atkins North America, Inc.	3

OC Public Works is procuring Services for the Project in accordance with the 2020 Design and Construction Procurement Policy Manual (DCPM), Section 3. The Orange County Preference Policy is not applicable to contracts procured in accordance with the DCPM.

Requirements of Title 2 of the Code of Federal Regulations (CFR), part 200 and Section 200.317-200.326 of the Federal Aviation Administration (FAA) Airport Improvement Plan and 49 CFR Part 26, Participation by Disadvantage Business Enterprises in Department of Transportation Programs, apply to this proposed contract award.

OC Public Works is recommending Board of Supervisors (Board) approval of Contract MA-080-24010110 (Contract) with AECOM Technical Services, Inc. (Contractor) for the Project, for a term of five years, in an amount not to exceed \$3,413,274, effective upon Board approval.

The Contractor's license number was verified as current and active through the Department of Consumer Affairs database on February 2, 2023. A copy of the verification is on file. The Contractor is based in Los Angeles County.

An analysis was conducted to determine the cost/benefit of contracting out versus providing Services in-house. Based on this analysis, OC Public Works has determined that contracting for Services was required as the specialized engineering expertise needed to complete the work is currently unavailable utilizing in-house staff.

OC Public Works has conducted due diligence on the Contractor. Reference checks were satisfactory and completed with the Port of Oakland, City of Phoenix Aviation Department and Sacramento County regarding similar projects.

This Contract includes subcontractors. See Attachment B for information regarding subcontractors and Contract Summary Form.

**Compliance with CEQA:** This action is not a Project within the meaning of CEQA Guidelines Section 15378 and is therefore not subject to CEQA since it does not have the potential for resulting in either a direct physical change in the environment or a reasonably foreseeable indirect physical change in the environment. The approval of this agenda item does not commit the County to a definite course of action in regard to a project since approval of the Contract would provide Architect-Engineer services for reconstruction of Taxiways at JWA. This proposed activity is therefore not subject to CEQA. Any individual, specific work authorized pursuant to this Contract will be reviewed for compliance with CEQA.

**FINANCIAL IMPACT:**

Appropriations for this Contract are included in Fund 281, Airport Construction Fund, FY 2023-24 Budget.

On July 13, 2022, JWA accepted an Airport Improvement Grant from the FAA to fund the design services for this Project in the amount of \$2,014,750. On March 24, 2023, the FAA approved JWA's Passenger Facility Charge Application (PFC) No. 2 and authorized the use of PFC revenue to cover the remaining costs of the Project.

The proposed Contract includes a provision stating the Contract may be terminated for convenience of the County upon less than seven days written notice to the Contractor and upon 10 days written notice to the Contractor prior to the effective date of the termination without penalty to the County.

**STAFFING IMPACT:**

N/A

**REVIEWING AGENCIES:**

John Wayne Airport

**ATTACHMENT(S):**

- Attachment A - Contract MA-080-24010110 with AECOM Technical Services, Inc.
- Attachment B - Contract Summary Form
- Attachment C - Memorandum of Recommendation and Evaluation Ranking Summary
- Attachment D - Summary of Evaluator Scoring
- Attachment E - Citations from Code of Federal Regulations

## CONTRACT

**THIS CONTRACT**, hereinafter referred to as “Contract” for purposes of identification hereby numbered **MA-080-24010110**, by and between the County of Orange, a political subdivision of the State of California, hereinafter referred to as “County” or “Owner” and **AECOM Technical Services, Inc.**, a California Corporation, hereinafter referred to as “A-E,” which are sometimes individually referred to as “Party” or collectively referred to as “Parties.”

## RECITALS

**WHEREAS**, County requires professional services to accomplish projects and/or services (“Projects/Services”) as described in **MA-080-24010110** Scope of Work for John Wayne Airport, Taxiways A, D, and E Reconstruction, hereinafter referred to as “Attachment A;” and

**WHEREAS**, A-E is a firm whose principals are, as required by law, registered by the State of California for the practice of specialized A-E services per the attached Scope of Work.

**NOW, THEREFORE, IT IS AGREED** by and between the parties hereto as follows:

### 1. GENERAL

#### 1.1. Retainer

- 1.1.1. County does hereby retain A-E to perform the Projects/Services as required by this Contract.
- 1.1.2. A-E has offered, and County has accepted, the professional services of Matt Ulukaya, PE and A-E shall assign him/her to the Projects/Services.
- 1.1.3. A-E may employ special consultants/contractors for the accomplishment of the Projects/Services specified; and only the firms or independent consultants/contractors identified in Attachment C may be employed by A-E to provide these Projects/Services.
- 1.1.4. Consultants/contractors may be substituted and/or added by mutual Contract of A-E and the Director of Orange County Public Works or his designee, hereinafter referred to as “Director.”
- 1.1.5. A-E's employment of independent consultants/contractors shall not relieve A-E from the performance of its own responsibilities pursuant to this Contract. However, all consultants/contractors independently contracting with County shall be independently liable to County for the performance of the work pursuant to their agreements, and A-E shall have no liability for work by contractors independently contracting with County.

#### 1.2. Projects/Services

##### 1.2.1. Description of Projects/Services

- a. Project/Services to be performed by A-E shall consist of the work as specified herein and as required in Attachment A, attached hereto and incorporated herein by reference. If in the event Attachment A shall be in conflict with any provision of this Contract, the wording as set forth in Attachment A shall prevail.
- b. A-E shall be responsible for submitting all Projects/Services to County in a form which has been thoroughly reviewed and checked for completeness, accuracy and consistency by the registered professional named in Section 1.1.2 herein; and, any Projects/Services not meeting this requirement will be returned to A-E prior to review by County.

**1.2.2. Design Criteria and Standards**

All Projects/Services shall be performed in accordance with instructions, criteria and standards set forth by the Director.

**1.2.3. Scheduling**

- a) Concurrently with the work of the Contract, A-E shall prepare a progress work schedule and within five (5) working days from the date of receipt of individual assignments from County, A-E shall submit to County two (2) copies of a progress work schedule which shall delineate dates of commencement and completion of the various phases of Projects/Services assignments. A-E schedule shall include required County review period(s) set forth herein. An approved copy of the progress schedule will be returned to A-E.
- b) A-E shall allow at least five (5) working days for County review of progress work schedule. In planning work, A-E should anticipate and allow ten (10) working days for County review of each submittal required in Attachment A.
- c) A-E shall meet on an as-needed basis as determined by County or at least once every four (4) weeks with County to review progress of work, adherence to progress schedule, coordination of work, scheduling of seminars, if needed, and to resolve any problems that may develop.
- d) Within five (5) working days of each meeting, A-E shall prepare a brief memorandum summarizing the results of the meeting and shall submit it to County for concurrence.
- e) A-E shall complete all the work of Projects/Services and obtain all approvals by the County within the time frame indicated in Attachment A except A-E shall not be responsible for any delay beyond the control of A-E.
- f) In the event A-E fails to complete the work and obtain the approval of Director in the time allowed, County shall have the option of completing the work by its own forces or by contract with another firm. The time allowed for A-E to complete the Projects/Services pursuant to this Contract shall be extended for delay caused by County in completing its work pursuant to this Contract which delay exceeds the agreed County review and/or approval time periods.

**1.3. Assistance by County Staff**

**1.3.1.** County shall assign an appropriate staff member to work with A-E in connection with the work of this Contract. Said staff member's duties will consist of the giving of advice and consultations, assisting A-E in negotiations with other public agencies and private parties, miscellaneous items which in the judgment of A-E or County's staff warrant attention, and all other duties as may be described in Attachment A.

**1.3.2.** All of the above activities, however, shall be the primary responsibility of A-E to schedule, initiate and carry through to completion.

**1.4. Term and Maximum Compensation**

The term of this Contract is for five (5) years commencing upon Board of Supervisor approval with a Maximum allowable compensation of three million, four hundred and thirteen thousand, two hundred seventy-three dollars and thirty-five cents (\$3,413,273.35), except as permitted in Paragraph 1.5 below.

**1.5. A-E Compensation and Extra Work**

- 1.5.1.** For the Projects/Services authorized under this Contract, A-E shall be compensated in accordance with the following:
- 1.5.2.** For completion and approval of all Projects/Services where “Extra Work” (defined as changes in approved portions of the Project/Services required by and ordered in writing by Director which changes constitute a change in or departure from said approved portions of Projects/Services) is not authorized, compensation including reimbursables shall be described and payable as stipulated in Fee Schedule, herein after referred to as “Attachment B,” attached hereto and incorporated herein by reference.
- 1.5.3.** Where Extra Work is authorized for Projects/Services:
- a) The amount for Extra Work shall be determined using Attachment B. Extra Work shall be required by and ordered in writing by Director. If this Contract is not approved by the Board of Supervisors, any change that increases the cumulative Contract price beyond \$200,000 must be approved by the Board. Increases in the Contract amount for services within the existing scope of work may be granted by the Director where the amount does not exceed 25 percent of the existing Contract price or \$200,000, whichever is less.
  - b) A-E's billing for the Extra Work shall include but not be limited to names of A-E's staff employed in the Extra Work, classification of employees and number of hours worked.
- 1.5.4.** For partial completion of work of Projects/Services followed by default on part of A-E:
- a) For failure to complete and secure approval of the first required submittal, there shall be no compensation.
  - b) For failure to complete and secure approval of other authorized phases, A-E shall, upon completion of Projects/Services by others, be entitled to receive compensation based on approved work of Projects/Services not to exceed the amounts specified in Attachment A for that particular submittal, plus the reasonable value as determined by County of the non-approved work; provided, however, that if the cost to County to complete the contract exceeds the amount specified herein, A-E shall be liable to County for such excess costs attributable to A-E's breach of the Contract.

**2. LABOR****2.1 Non-Employment of County Personnel**

- 2.1.1** A-E agrees that it will neither negotiate, offer, or give employment to any full-time, regular employee of County in professional classifications of the same skills required for the performance of this Contract who is involved in this Project in a participatory status during the life of this Contract regardless of the assignments said employee may be given or the days or hours employee may work.
- 2.1.2** Nothing in this Contract shall be deemed to make A-E, or any of A-E's employees or agents, agents or employees of the County. A-E shall be an independent contractor and shall have responsibility for and control over the details and means for performing the work, provided that A-E is in compliance with the terms of this Contract. Anything in the Contract which may appear to give County the right to direct A-E as to the details of the performance of the work or to exercise a measure of control over A-E shall mean that A-E shall follow the desires of County, only in the

results of the work.

## **2.2 Non-Discrimination**

- 2.2.1** In the performance of this Contract, A-E agrees that it will comply with the requirements of the California Labor Code and not engage nor permit any subcontractors to engage in discrimination in employment of persons because of the race, religious creed, color, national origin, ancestry, physical disability, mental disability, medical condition, marital status, or sex of such persons.
- 2.2.2** A-E acknowledges that a violation of this provision shall subject A-E to all the penalties imposed for a violation of the California Labor Code.
- 2.2.3** The A-E shall comply with the regulations relative to nondiscrimination in Federally assisted programs of the Department of Transportation (DOT) Title 49, Code of Federal Regulations, Part 21, as they may be amended from time to time (Regulations), which are incorporated herein by reference and made a part of this Agreement.
- 2.2.4** A-E shall provide all information and reports required by the regulations or directives issued pursuant thereto and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor or the Federal Aviation Administration (FAA) to be pertinent to ascertain compliance with such regulations, orders and instructions.

Where any information required of A-E is in the exclusive possession of another who fails or refuses to furnish this information, A-E shall so certify to the sponsor or the FAA, as appropriate, and shall set forth what efforts it has made to obtain the information.

## **2.3 Employee Eligibility Verification**

A-E warrants that it fully complies with all Federal and State statutes and regulations regarding the employment of aliens, and others and that all its employees performing work under this Contract meet the citizenship or alien status requirement set forth in Federal statutes and regulations. A-E shall obtain from all employees performing work hereunder, all verification and other documentation of employment eligibility status required by Federal or State statutes and regulations, including but not limited to, the Immigration Reform and Control Act of 1986, 8 U.S.C. § 1324 et seq., as they currently exist and as they may be hereafter amended. A-E shall retain all such documentation for all covered employees for the period prescribed by the law.

## **2.4 Independent Contractor**

- 2.4.1** As referenced in Section 2.1.2 of this Contract, A-E shall be considered an independent contractor.
- 2.4.2** Neither A-E, its employees nor anyone working under A-E shall qualify for workers' compensation or other fringe benefits of any kind through County.

## **2.5 Conflict of Interest Contractor Personnel**

- 2.5.1** The A-E shall exercise reasonable care and diligence to prevent any actions or conditions that could result in a conflict with the best interests of the County. This obligation shall apply to the A-E; the A-E's employees, agents, and relatives; sub-tier contractors; and third parties associated with accomplishing work and Projects/Services hereunder.

- 2.5.2 A-E's efforts shall include, but not be limited to establishing precautions to prevent its employees or agents from: making, receiving, providing or offering gifts, entertainment, payments, loans or other considerations which could be deemed to appear to influence individuals to act contrary to the best interests of the County.

## 2.6 Labor Code Notice

All A-E and subcontractors must comply with the requirements of California Labor Code 1770 et seq. if the work performed is considered a "public works" under California Labor Code 1720 et seq. A-E is encouraged to contact the California Department of Industrial Relations for clarification if the A-E is unsure if some or any of the work performed under this Contract qualifies as "public works."

## 3. INSURANCE

- 3.1 Prior to the provision of services under this Contract, the A-E agrees to carry all required insurance at A-E's expense, including all endorsements required herein, necessary to satisfy the County that the insurance provisions of this Contract have been complied with. A-E agrees to keep such insurance coverage, provide Certificates of Insurance, and endorsements to the County during the entire term of this Contract. The County reserves the right to request the declarations page showing all endorsements and a complete certified copy of the policy.
- 3.2 A-E shall ensure that all subcontractors performing work on behalf of A-E pursuant to this Contract shall be covered under A-E's insurance as an Additional Insured **or** carry insurance subject to the same terms and conditions as set forth herein for A-E. A-E shall not allow subcontractors to work if subcontractors have less than the level of coverage required by County from A-E under this Contract. It is the obligation of A-E to provide notice of the insurance requirements to every subcontractor and to receive proof of insurance prior to allowing any subcontractor to begin work. Such proof of insurance must be maintained by A-E through the entirety of this Contract for inspection by County representative(s) at any reasonable time.
- 3.3 All self-insured retentions (SIRs) shall be the sole responsibility of A-E. Any SIR in excess of Fifty Thousand Dollars (\$50,000) shall specifically be approved by the County's Risk Manager, or designee. The County reserves the right to require current audited financial reports from A-E. If A-E is self-insured, A-E will indemnify the County for any and all claims resulting or arising from A-E's services in accordance with the indemnity provision stated in this Contract.

If the A-E fails to maintain insurance acceptable to the County for the full term of this Contract, the County may terminate this Contract.

## 3.4 Qualified Insurer

1. The policy or policies of insurance must be issued by an insurer with a minimum rating of A- (Secure A.M. Best's Rating) and VIII (Financial Size Category as determined by the most current edition of the **Best's Key Rating Guide/Property-Casualty/United States or ambest.com**).

If the insurance carrier does not have an A.M. Best Rating of A-/VIII, the CEO/Office of Risk Management retains the right to approve or reject a carrier after a review of the company's performance and financial ratings.

2. The policy or policies of insurance maintained by the A-E shall provide the minimum limits and coverage as set forth below:



**Coverage****Minimum Limits**

Commercial General Liability	\$1,000,000 per occurrence \$2,000,000 aggregate
Automobile Liability including coverage for owned, scheduled, non-owned and hired vehicles	\$5,000,000 per occurrence combined single limit each accident
Workers' Compensation	Statutory
Employers' Liability Insurance	\$1,000,000 per accident or disease
Professional Liability	\$5,000,000 per claims made or per occurrence \$5,000,000 aggregate

Increased insurance limits may be satisfied with Excess/Umbrella policies. Excess/Umbrella policies when required must provide Follow Form coverage.

**A. Required Coverage Forms**

1. The Commercial General Liability coverage shall be written on occurrence basis Insurance Services Office (ISO) form CG 00 01, or a substitute form providing liability coverage at least as broad.
2. The Business Auto Liability coverage shall be written on ISO form CA 00 01, CA 00 05, CA 00 12, CA 00 20, or a substitute form providing liability coverage at least as broad.

**B. Required Endorsements**

The Commercial General Liability policy shall contain the following endorsements, which shall accompany the Certificate of Insurance:

1. An Additional Insured endorsement using ISO form CG 20 26 04 13 or a form at least as broad naming the ***County of Orange, its elected and appointed officials, officers, employees, and agents*** as Additional Insureds, or provide blanket coverage which shall state ***as Required by Written Contract***.
2. A primary non-contributing endorsement using ISO form CG 20 01 0413, or a form at least as broad evidencing that A-E's insurance is primary, and any insurance or self-insurance maintained by the County of Orange shall be excess and non-contributing.

The Workers' Compensation policy shall contain a waiver of subrogation endorsement waiving all rights of subrogation against ***the County of Orange, its elected and appointed officials, officers, employees, and agents***, or provide blanket coverage which shall state ***as Required by Written Contract***.

If the A-E's Professional is/are a claims-made policy, A-E shall agree to the following:

1. The retroactive date must be shown and must be before the date of the Contract or the beginning of the Contract services.

2. Insurance must be maintained, and evidence of insurance must be provided for at least three (3) years after expiration or earlier termination of Contract services.
- 3.5. If coverage is canceled or non-renewed, and not replaced with another claims-made policy form with a retroactive date prior to the effective date of the Contract services, A-E must purchase an extended reporting period for a minimum of three (3) years after expiration of earlier termination of the Contract.
- 3.6 All insurance policies required by this Contract shall waive all rights of subrogation against the ***County of Orange, its elected and appointed officials, officers, employees, and agents*** when acting within the scope of their appointment or employment.
- 3.7 A-E shall provide thirty (30) days prior written notice to the County of any policy cancellation or non-renewal and ten (10) days prior written notice where cancellation is due to non-payment of premium and provide a copy of the cancellation notice to County. Failure to provide written notice of cancellation may constitute a material breach of the Contract, upon which the County may suspend or terminate this Contract.
- 3.8 The Commercial General Liability policy shall contain a severability of interests clause (standard in the ISO CG 001 policy).
- 3.9. Insurance certificates should be forwarded to the agency/department address listed on the solicitation. If the A-E fails to provide the insurance certificates and endorsements within seven (7) days of notification by CEO/Purchasing or the agency/department purchasing division, award may be made to the next qualified vendor.
- 3.9.1 County expressly retains the right to require A-E to increase or decrease insurance of any of the above insurance types throughout the term of this Contract. Any increase or decrease in insurance will be as deemed by County of Orange Risk Manager as appropriate to adequately protect County.

County shall notify A-E in writing of changes in the insurance requirements. If A-E does not provide copies of acceptable Certificates of Insurance and endorsements to County incorporating such changes within thirty (30) days of receipt of such notice, this Contract may be in breach without further notice to A-E, and County shall be entitled to all legal remedies.

The procuring of such required policy or policies of insurance shall not be construed to limit A-E's liability hereunder nor to fulfill the indemnification provisions and requirements of this Contract, nor act in any way to reduce the policy coverage and limits available from the insurer.

#### 4. INDEMNITY/COMPLIANCE

- 4.1 A-E shall indemnify, defend with counsel approved in writing by County, and hold harmless, the County, Orange County and their agents, officers, and employees from employer sanctions and any other liability which may be assessed against A-E or the County or both in connection with any alleged violation of any Federal or State statutes or regulations pertaining to the eligibility for employment of any persons performing work under this Contract.
- 4.2 All Projects/Services submitted by A-E shall be complete and shall be carefully checked prior to submission. A-E understands that County's checking is discretionary, and A-E shall not assume that County will discover errors and/or omissions. If County discovers any errors or omissions prior to approving A-E's Projects/Services, the Projects/Services will be returned to A-E for correction. Should County or others discover errors or omissions in the work submitted by A-E after County's approval thereof, County's approval of A-E's Projects/Services shall not be used as a defense by A-

E.

#### 4.3 Indemnification

A-E agrees to, indemnify, defend with counsel approved in writing by County, and hold County and its elected and appointed officials, officers, employees, agents and those special districts and agencies which County's Board of Supervisors acts as the governing Board ("County Indemnitees") harmless from any claims, demands or liability of any kind or nature, including but not limited to personal injury or property damage, arising out of, pertaining to, or relating to the negligence, recklessness, or willful misconduct of the A-E. If judgment is entered against A-E and County by a court of competent jurisdiction because of the concurrent active negligence of A-E and County or County Indemnitees, A-E and County agree that liability will be apportioned as determined by the court. Neither party shall request a jury apportionment. Notwithstanding anything stated above, nothing contained herein shall relieve A-E of any insurance requirements or obligations created elsewhere in this Contract.

#### 4.4 Bills and Liens

A-E shall pay promptly all indebtedness for labor, materials and equipment used in performance of the work. A-E shall not permit any lien or charge to attach to the work or the premises, **but if any does so attach, A-E shall promptly procure its release and, in accordance with the requirements of the indemnification paragraph above, indemnify, defend, and hold County harmless and be responsible for payment of all costs, damages, penalties and expenses arising from or related thereto.**

#### 4.5 Compliance with Laws

4.5.1 A-E represents and agrees that services to be provided under this contract shall fully comply, at A-E's expense, with all standards, laws, statutes, restrictions, ordinances, requirements, and regulations (collectively "laws"), including, but not limited to those issued by County in its governmental capacity and all other laws applicable to the Projects/Services at the time Projects/Services are provided to and accepted by County.

4.5.2 A-E acknowledges that County is relying on A-E for such compliance, and pursuant to the requirements of the indemnification paragraph above, **A-E agrees that it shall defend, indemnify and hold County and County Indemnitees harmless from all liability, damages, costs and expenses arising from or related to a violation of such laws.**

### 5. TERMINATION

#### 5.1 Termination of Contract for Cause

5.1.1 If A-E breaches any of the covenants or conditions of this County, County shall have the right to terminate this County upon ten (10) days written notice prior to the effective day of termination.

5.1.2 A-E shall have the opportunity to cure the alleged breach prior to termination.

5.1.3 In the event the alleged breach is not cured by A-E prior to termination, all work performed by A-E pursuant to this County, which work has been reduced to plans or other documents, shall be made available to County.

## 5.2 Termination for Convenience

- 5.2.1** Notwithstanding any other provision of the County, County may at any time, and without cause, terminate this County in whole or in part, upon not less than seven (7) calendar days' written notice to the A-E. Such termination shall be effected by delivery to the A-E of a notice of termination specifying the effective date of the termination and the extent of the Work to be terminated.
- 5.2.2** A-E shall immediately stop work in accordance with the notice and comply with any other direction as may be specified in the notice or as provided subsequently by County.
- 5.2.3** County shall pay the A-E for the Work completed prior to the effective date of the termination, and such payment shall be the A-E's sole remedy under this County.
- 5.2.4** Under no circumstances will A-E be entitled to anticipatory or unearned profits, consequential damages, or other damages of any sort as a result of a termination or partial termination under this Paragraph.
- 5.2.5** A-E shall insert in all subcontracts that the subcontractor shall stop work on the date of and to the extent specified in a notice of termination and shall require subcontractors to insert the same condition in any lower tier subcontracts.

## 5.3 Breach of Contract

The failure of the A-E to comply with any of the provisions, covenants or conditions of this Contract shall be a material breach of this Contract. In such event, in addition to any other remedies available at law, in equity, or otherwise specified in this Contract, the County may:

- a. Afford the A-E written notice of the breach and ten (10) calendar days or such shorter time that may be specified in this Contract within which to cure the breach;
- b. Discontinue payment to the A-E for and during the period in which the A-E is in breach; and
- c. Offset those monies disallowed pursuant to the above, against any monies billed by the A-E but yet unpaid by the County.

## 5.4 Default

- 5.4.1** In the event any equipment or service furnished by the A-E in the performance of this Contract should fail to conform to the specifications therein within one (1) calendar year from the County's acceptance of the equipment or service, or any performance period specifically specified within the specifications or Contract, whichever is greater, the County may reject same, and it shall become the duty of the A-E to reclaim and remove the items without expense to the County and to immediately replace all such rejected equipment or service with others conforming to such specifications, provided that should the A-E fail, neglect or refuse to do so within one hundred and twenty (120) calendar days, the County shall have the right to purchase on the open market a corresponding quantity of any such equipment or service and to deduct from any monies due or that may thereafter become due to the A-E the difference between the price specified in this Contract and the actual cost to the County.
- 5.4.2** In the event the A-E shall fail to make prompt delivery as specified of any equipment or service, the same conditions as to the rights of the County to purchase on the open market and to reimbursement set forth above shall apply, except as otherwise provided in this Contract.

- 5.4.3** In the event of the cancellation of this Contract, either in whole or in part, by reason of the default or breach by the A-E, any loss or damage sustained by the County in procuring any equipment or service which the A-E agreed to supply under this Contract shall be borne and paid for by the A-E.
- 5.4.4** Default shall include failure to carry out any of the requirements of this Contract, including, but not limited to not providing enough properly skilled workers or proper materials, persistently disregarding laws and or ordinances, not proceeding with the Projects/Services as agreed to herein, or otherwise substantially violating any provision of this Contract.
- 5.4.5** Upon termination of the Contract with A-E, the County may begin negotiations with a third-party A-E to provide goods and/or Projects/Services as specified in this Contract.
- 5.4.6** The right of either party to terminate this Contract hereunder shall not be affected in any way by its waiver of or failure to take action with respect to any previous default.

## **6. MISCELLANEOUS**

### **6.1 Laws to be Observed**

A-E is assumed to be familiar with and, at all times, shall observe and comply with all federal, state and local laws, ordinances and regulations in any manner affecting the conduct of the Projects/Services.

### **6.2 Award of Construction Contract and Other Future Contracts**

A-E is hereby informed that provisions of the Public Contract Code, the Political Reform Act of 1974, other statutes, regulations, and County policy prohibit, as an impermissible conflict of interest, the award of a contract for the construction of the project(s) on which A-E performed architectural-engineering services under this A-E Contract. A-E is hereby informed that these statutes and regulations could also prohibit the award to A-E of design or other contracts on future phases related to tasks performed by A-E under this Contract. This prohibition applies also to a subcontractor of or parent company of the firm that performed architectural-engineering tasks under this Contract.

### **6.3 Amendments**

No alteration or variation of the terms of this Contract shall be valid unless made in writing and signed by the parties; no oral understanding or agreement not incorporated herein shall be binding on either of the parties; and no exceptions, alternatives, substitutes or revisions are valid or binding on County unless authorized by County in writing.

### **6.4 Successors and Assigns**

The terms and provisions of this Contract shall be binding upon and inure to the benefit of the parties hereto and their successors and assigns.

### **6.5 Entirety**

This Contract contains the entire agreement between the parties with respect to the matters provided for herein.

**6.6 Severability**

If any part of this Contract is held, determined, or adjudicated to be illegal, void, or unenforceable by a court of competent jurisdiction, the remainder of this Contract shall be given effect to the fullest extent reasonably possible.

**6.7 Binding Obligation**

The Parties to this Contract represent and warrant that this Contract has been duly authorized and executed and constitutes the legally binding obligation of their respective organization or entity enforceable in accordance with its terms.

**6.8 Governing Law and Venue**

**6.8.1** This Contract has been negotiated and executed in the State of California and shall be governed by and construed under the laws of the State of California. In the event of any legal action to enforce or interpret this Contract, the sole and exclusive venue shall be a court of competent jurisdiction located in Orange County, California, and the Parties hereto agree to and do hereby submit to the jurisdiction of such court, notwithstanding Code of Civil Procedure, Section 394.

**6.8.2** The Parties specifically agree that by soliciting and entering into and performing Projects/Services under this Contract, the A-E shall be deemed to constitute doing business within Orange County from the time of solicitation of work, through the period when all Projects/Services under this Contract is completed and continuing until the expiration of any applicable limitations period.

**6.9 Intentionally Omitted****6.10 Ownership of Documents**

**6.10.1** All data, including but not limited to letters, reports, files, plans, drawings, specifications, proposals, sketches, diagrams and calculations, prepared by A-E and/or anyone acting under the supervision of A-E pursuant to this Contract, shall become the property of County upon preparation by A-E and may be used by the County as it may require without additional cost to the County.

**6.10.2** County shall not be limited in any way to its use thereof at any time, including the release of this data to third parties. A-E shall be held harmless for release of such data as may be prepared or created under this Contract to any third party. If A-E and/or anyone acting under the supervision of A-E should later desire to use any of the data prepared in connection with this Contract, A-E shall first obtain the written approval of County.

**6.11 Confidentiality**

**6.11.1** All ideas, memoranda, specifications, plans, procedures, drawings, descriptions, and all written or other information submitted to A-E in connection with the performance of this Contract shall be held confidential by A-E and/or anyone acting under the supervision of A-E and shall not, without the prior written consent of County, be used for any purposes other than the performance of the Projects/Services described in Attachment A, nor be disclosed to any person, partnership, company, corporation or agency, not connected with the performance of the Projects/Services.

**6.11.2** Nothing furnished to A-E which is generally known among counties in Southern California shall be deemed confidential.

**6.11.3** A-E and/or anyone acting under the supervision of A-E shall not use County name or insignia, photographs of the work, or any other publicity pertaining to the work in any magazine, trade paper, newspaper, or other medium without the express written consent of County.

## **6.12 Publication**

**6.12.1** No copies of sketches, schedules, written documents, computer-based data, photographs, maps or graphs, including graphic art work, resulting from performance or prepared in connection with this Contract, are to be released by A-E and/or anyone acting under the supervision of A-E to any person, partnership, company, corporation, or agency, without prior written approval by the County, except as necessary for the performance of the services of this Contract. All press contacts, including graphic display information to be published in newspapers, magazines, etc., are to be administered only after County approval.

**6.12.2** The A-E agrees that it will not issue any news releases or make any contact with the media in connection with either the award of this Contract or any subsequent amendment of, or effort under this Contract. A-E must first obtain review and approval of said media contact from the County through the County's Project Manager. Any requests for interviews or information received by the media should be referred directly to the County. A-E's are not authorized to serve as a media spokesperson for County projects without first obtaining permission from the County Project Manager.

## **6.13 Records and Audit/Inspections**

**6.13.1** A-E shall keep an accurate record of time expended by A-E and/or consultants employed by A-E in the performance of this Contract.

**6.13.2** Within ten (10) days of County's written request, A-E shall allow County or authorized State or Federal agencies or any duly authorized representative to have the right to access, examine, audit, excerpt, copy or transcribe any pertinent transaction, activity, time cards or other records relating to this Contract.

**6.13.3** A-E shall keep such material, including all pertinent cost accounting, financial records and proprietary data for a period of three (3) years after termination or completion of the Contract or until resolution of any claim or dispute between the Parties, whichever is later.

**6.13.4** Should A-E cease to exist as a legal entity, records pertaining to this Contract shall be forwarded within a reasonable period of time not to exceed sixty (60) days to its successor in interest or surviving entity in a merger or acquisition, or, in the event of liquidation, to County.

## **6.14 Notices**

**6.14.1** Any and all notices, requests, demands and other communications contemplated, called for, permitted, or required to be given hereunder shall be in writing, except through the course of the Parties' project managers' routine exchange of information and cooperation during the Projects/Services.

**6.14.2** Any written communications shall be deemed to have been duly given upon actual in-person delivery, if delivery is by direct hand, or upon delivery on the actual day of receipt, or no greater than four (4) calendar days after being mailed by U. S. certified or registered mail, return receipt requested, postage prepaid, whichever occurs first. The date of mailing shall count as the first day.

- 6.14.3** All communications shall be addressed to the appropriate party at the address stated herein or such other address as the parties hereto may designate by written notice from time to time in the manner aforesaid.

**For A-E:**           **AECOM Technical Services, Inc.**  
**999 Town & Country Road**  
**Orange, CA 92868**  
**Attn: Matt Ulukaya**  
**Phone: 714-224-2248**  
**E-mail: [Matt.Ulukaya@accom.com](mailto:Matt.Ulukaya@accom.com)**

**For COUNTY: Orange County Public Works, Facilities/A&E Project Management**  
**601 N. Ross St.**  
**Santa Ana, CA 92701**  
**Attn: John Pape**  
**Phone: 714-667-1680**  
**E-mail: [John.Pape@ocpw.ocgov.com](mailto:John.Pape@ocpw.ocgov.com)**

**cc:**               **OC Public Works Procurement Services**  
**601 N. Ross St.**  
**Santa Ana, CA 92701**  
**Attn: Daisy Corona**  
**Phone: 714-667-9643**  
**E-mail: [Daisy.Corona@ocpw.ocgov.com](mailto:Daisy.Corona@ocpw.ocgov.com)**

**6.15 Attorney's Fees**

In any action or proceeding to enforce or interpret any provision of this Contract, or where any provision hereof is validly asserted as a defense, each party shall bear its own attorney's fees, costs and expenses.

**6.16 Interpretation**

- 6.16.1** Contract has been negotiated at arm's length and between persons sophisticated and knowledgeable in the matters dealt with in this Contract.
- 6.16.2** In addition, each Party has been represented by experienced and knowledgeable independent legal counsel of their own choosing or has knowingly declined to seek such counsel despite having the opportunity to do so.
- 6.16.3** Each Party further acknowledges that they have not been influenced to any extent whatsoever in executing this Contract by any other Party hereto or by any person representing them, or both.
- 6.16.4** Accordingly, any rule of law (including California Civil Code Section 1654) or legal decision that would require interpretation of any ambiguities in this Contract against the Party that has drafted it is not applicable and is waived.
- 6.16.5** The provisions of this Contract shall be interpreted in a reasonable manner to affect the purpose of the Parties and this Contract.



**6.17 Headings**

The various headings and numbers herein, the grouping of provisions of this Contract into separate clauses and paragraphs, and the organization hereof are for the purpose of convenience only and shall not limit or otherwise affect the meaning hereof.

**6.18 Acceptance**

Unless otherwise agreed to in writing by County acceptance shall not be deemed complete unless in writing and until all the services have actually been received, inspected, and tested to the satisfaction of County.

**6.19 Changes**

A-E shall make no changes in the work or perform any additional work without the County's specific written approval.

**6.20 Assignment**

The terms, covenants, and conditions contained herein shall apply to and bind the heirs, successors, executors, administrators and assigns of the parties. Furthermore, neither the performance of this Contract nor any portion thereof may be assigned or sub-contracted by A-E, by any means whatsoever including but not limited to acquisition by merger, without the express written consent of County. Any attempt by A-E to assign or sub-contract the performance or any portion thereof of this Contract without the express written consent of County shall be invalid and shall constitute a breach of this Contract.

**6.21 Changes in Ownership**

A-E agrees that if there is a change or transfer in ownership, including but not limited to merger by acquisition, of A-E's business prior to completion of this Contract, the new owners shall be required under terms of sale or other transfer to assume A-E's duties and obligations contained in this Contract and to obtain the written approval of County of such merger or acquisition, and complete the obligations and duties contained in the Contract to the satisfaction of County. A-E agrees to pay, or credit toward future work, County's costs associated with processing the merger or acquisition.

**6.22 Force Majeure**

A-E shall not be assessed with damages or unsatisfactory performance penalties during any delay beyond the time named for the performance of this Contract caused by any act of God, war, civil disorder, employment strike or other cause beyond its reasonable control, provided A-E gives written notice of the cause of the delay to County within thirty-six (36) hours of the start of the delay and A-E avails himself of any available remedies.

**6.23 Calendar Days**

Any reference to the word "day" or "days" herein means calendar day or calendar days, respectively, unless otherwise expressly provided.

**6.24 Title to Data**

- 6.24.1** All materials, documents, data or information obtained from the County data files or any County medium furnished to the A-E in the performance of this Contract, will at all times remain the property of the County. Such data or information may not be used or copied for direct or indirect use by the A-E after completion or termination of this Contract without the express written consent of the County.
- 6.24.2** All materials, documents, data or information, including copies furnished by County and loaned to A-E for his temporary use, must be returned to the County at the end of this Contract unless otherwise specified by the Director.

**6.25 Availability of Funds**

The obligation of County is subject to the availability of funds appropriated for this purpose, and nothing herein shall be construed as obligating the County to expend or as involving the County in any contract or other obligation for future payment of money in excess of appropriations authorized by law.

**6.26 Contingency of Funding**

A-E acknowledges that funding or portions of funding for this Contract may also be contingent upon receipt of funds from, and/or appropriation of funds by, the State of California or other funding sources to County. If such funding and/or appropriations are not forthcoming, or otherwise limited, County may immediately terminate or modify this Contract without penalty.

**6.27 Contract Construction**

The parties acknowledge that each party and its counsel have reviewed this Contract and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Contract or any amendment or exhibits hereto.

**6.28 Conflicts of Interest**

- 6.28.1** A-E or its employees may be subject to the provisions of the California Political Reform Act of 1974 (the "Act"), which (1) requires such persons to disclose any financial interest that may be materially affected by services provided under this Contract, (2) prohibits such persons from making, or participating in making, decisions that could reasonably affect such interest; and (3) may require the filing a Statement of Economic Interest (Form 700).
- 6.28.2** If subject to the Act, A-E shall conform to all requirements of the Act. Failure to do so shall constitute a material breach and is grounds for immediate termination of this Contract by County. Pursuant to Section 4.3 "Indemnification," A-E shall indemnify and hold harmless County for any and all claims for damages resulting from Contractor's violation of this Section.

**6.29 Usage**

No guarantee is given by the County to A-E regarding usage of this Contract. The A-E agrees to supply services requested, as needed by the County of Orange, at prices listed in the Contract, regardless of quantity requested.

### 6.30 Wage Rates

Contractor shall post a copy of the wage rates at the job site and shall pay the adopted prevailing wage rates as a minimum. Pursuant to the provisions of Section 1773 of the Labor Code of the State of California, the Board of Supervisors has obtained the general prevailing rate of per diem wages and the general prevailing rate for holiday and overtime work in this locality for each craft, classification, or type of workman needed to execute this Contract from the Director of the Department of Industrial Relations. These rates are on file with the Clerk of the Board of Supervisors. Copies may be obtained at cost at the office of County's OC Public Works/OC Facilities & Asset Management/A&E Project Management or visit the website of the Department of Industrial Relations, Prevailing Wage Unit at [www.dir.ca.gov/DLSR/PWD](http://www.dir.ca.gov/DLSR/PWD). The Contractor shall comply with the provisions of Sections 1774, 1775, 1776 and 1813 of the Labor Code.

### 6.31 Apprenticeship Requirements

The Contractor shall comply with Section 230.1(A), California Code of Regulations as required by the Department of Industrial Relations, Division of Apprenticeship Standards by submitting DAS Form to the Joint Apprenticeship Committee of the craft or trade in the area of the site.

### 6.32 Registration of Contractor

All contractors and subcontractors must comply with the requirements of Labor Code Section 1771.1(a), pertaining to registration of contractors pursuant to Section 1725.5. Bids cannot be accepted from unregistered contractors except as provided in Section 1771.1. This project is subject to compliance monitoring and enforcement by the Department of Industrial Relations. After award of the contract, Contractor and each Subcontractor shall furnish electronic payroll records directly to the Labor Commissioner in the manner specified in Labor Code Section 1771.4.

### 6.33 Payroll Records

**6.33.1** Contractor and any Subcontractor(s) shall comply with the requirements of Labor Code Section 1776. Such compliance includes the obligation to furnish the records specified in Section 1776 directly to the Labor Commissioner in an electronic format, or other format as specified by the Commissioner, in the manner provided by Labor Code Section 1771.4.

**6.33.2** The requirements of Labor Code Section 1776 provide, in summary:

- i. Contractor and any Subcontractor(s) performing any portion of the work under this Contract shall keep an accurate record, showing the name, address, social security number, work classification, straight time and overtime hours worked each day and week, and the actual per diem wages paid to each journeyman, apprentice, worker, or other employee employed by Contractor or any Subcontractor(s) in connection with the work.
- ii. Each payroll record shall contain or be verified by a written declaration that it is made under penalty of perjury, stating both of the following:
  - a. The information contained in the payroll record is true and correct.
  - b. The employer has complied with the requirements of Labor Code Sections 1771, 1811, and 1815 for any work performed by his or her employees in connection with the Contract.

- iii. The payroll records shall be certified and shall be available for inspection at the principal office of Contractor on the basis set forth in Labor Code Section 1776.
  - iv. Contractor shall inform County of the location of the payroll records, including the street address, city and County, and shall, within five working days, provide a notice of any change of location and address of the records.
  - v. Pursuant to Labor Code Section 1776, Contractor and any Subcontractor(s) shall have 10 days in which to provide a certified copy of the payroll records subsequent to receipt of a written notice requesting the records described herein. In the event that Contractor or any Subcontractor fails to comply within the 10-day period, he or she shall, as a penalty to County, forfeit \$100, or a higher amount as provided by Section 1776, for each calendar day, or portion thereof, for each worker to whom the noncompliance pertains, until strict compliance is effectuated. Contractor acknowledges that, without limitation as to other remedies of enforcement available to County, upon the request of the Division of Apprenticeship Standards or the Division of Labor Standards Enforcement of the California Department of Industrial Relations, such penalties shall be withheld from progress payments then due Contractor. Contractor is not subject to a penalty assessment pursuant to this section due to the failure of a subcontractor to comply with this section.
- 6.33.3** Contractor and any Subcontractor(s) shall comply with the provisions of Labor Code Sections 1771 et seq. and shall pay workers employed on the Contract not less than the general prevailing rates of per diem wages and holiday and overtime wages as determined by the Director of Industrial Relations. Contractor shall post a copy of these wage rates at the job site for each craft, classification, or type of worker needed in the performance of this Contract, as well as any additional job site notices required by Labor Code Section 1771.4(b). Copies of these rates are on file at the principal office of County's representative, or may be obtained from the State Office, Department of Industrial Relations ("DIR") or from the DIR's website at [www.dir.ca.gov](http://www.dir.ca.gov). If the Contract is federally funded, Contractor and any Subcontractor(s) shall not pay less than the higher of these rates or the rates determined by the United States Department of Labor.

#### **6.34 Work Hour Penalty**

Eight hours of labor constitute a legal day's work, and forty hours constitute a legal week's work. Pursuant to Section 1813 of the Labor Code of the State of California, the Contractor shall forfeit to the County Twenty Five Dollars (\$25) for each worker employed in the execution of this Contract by the Contractor or by any subcontractor for each calendar day during which such worker is required or permitted to work more than the legal day's or week's work, except that work performed by employees of said Contractor and subcontractors in excess of the legal limit shall be permitted without the foregoing penalty upon the payment of compensation to the workers for all hours worked in excess of eight hours per day of not less than 1-1/2 times the basic rate of pay.

#### **6.35 Apprentices**

- 6.35.1** The Contractor acknowledges and agrees that, if this Contract involves a dollar amount greater than or a number of working days greater than that specified in Labor Code Section 1777.5, this Contract is governed by the provisions of Labor Code Section 1777.5. It shall be the responsibility of the Contractor to ensure compliance with this Article and with Labor Code Section 1777.5 for all apprenticeable occupations.
- 6.35.2** Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractors under him employing workers in any apprenticeable craft or trade in performing any work under this Contract shall apply to the applicable joint apprenticeship committee for a certificate approving the Contractor or subcontractor under the

applicable apprenticeship standards and fixing the ratio of apprentices to journeymen employed in performing the work.

- 6.35.3** Pursuant to Labor Code Section 1777.5 if that Section applies to this Contract as indicated above, the Contractor and any subcontractor under him may be required to make contributions to the apprenticeship program.
- 6.35.4** The Contractor and all subcontractors under him shall comply with Labor Code Section 1777.6 which Section forbids certain discriminatory practices in the employment of apprentices.

**6.36 Safety**

A-E shall comply with County's Safety and Loss Prevention Policy and Procedure #306 ("Contractor Safety Responsibilities") and submit a copy of its Injury and Illness Prevention Program (IIPP) and Contractor Safety-Activity Checklist to the designated County Procurement staff as part of the solicitation and/or contract process. A-E will notify County Project Manager of any revisions to the Safety Activity Checklist and will provide a new Safety-Activity Checklist upon County request. The IIPP shall comply with California Code of Regulations, Title 8, Section 1509 or 3203 (whichever applies). A-E shall submit other safety programs that pertain to the type of job that will be performed on site. County reserves the right to conduct inspections and audits as necessary for the purpose of evaluating any aspect of safety performance under this Contract.

**7. FEDERAL AVIATION ADMINISTRATION AIRPORT IMPROVEMENT PROGRAM REQUIREMENTS**

Work against this contract may be partially funded by FAA AIP grants throughout the life of the contract. Therefore, the requirements of Title 2 of the Code of Federal Regulations (C.F.R.), part 200 and §200.317-200.326 of the Federal Aviation Administration (FAA) Airport Improvement Plan, and 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Programs apply. When federal funds are applied, the following are mandatory provisions of the Federal Aviation Administration, and it is the responsibility of the consultant and its subconsultant(s) to comply.

**7.1 Access to Records and Reports**

The Contractor must maintain an acceptable cost accounting system. The Contractor agrees to provide the Owner, the Federal Aviation Administration and the Comptroller General of the United States or any of their duly authorized representatives access to any books, documents, papers and records of the Contractor which are directly pertinent to the specific contract for the purpose of making audit, examination, excerpts and transcriptions. The Contractor agrees to maintain all books, records and reports required under this contract for a period of not less than three years after final payment is made and all pending matters are closed.

**7.2 General Civil Rights Provisions**

In all its activities within the scope of its airport program, the Contractor agrees to comply with pertinent statutes, Executive Orders, and such rules as identified in Title VI List of Pertinent Nondiscrimination Acts and Authorities to ensure that no person shall, on the grounds of race, color, national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability be excluded from participating in any activity conducted with or benefiting from Federal assistance.

The provision binds the Contractor and subcontractors from the bid solicitation period through the completion of the contract. This provision is in addition to that required by Title VI of the Civil Rights Act of 1964.

### 7.3 Compliance with Nondiscrimination Requirements:

During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

#### 7.3.1 Compliance with Regulations: The Contractor (hereinafter includes consultants) will comply with the Title VI List of Pertinent Nondiscrimination Acts and Authorities, as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.

**Nondiscrimination:** The Contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color, or national origin (including limited English proficiency), creed, sex (including sexual orientation and gender identity), age, or disability in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The Contractor will not participate directly or indirectly in the discrimination prohibited by the Nondiscrimination Acts and Authorities, including employment practices when the contract covers any activity, project, or program set forth in Appendix B of 49 CFR part 21.

#### 7.3.2 Solicitations for Subcontracts, including Procurements of Materials and Equipment: In all solicitations, either by competitive bidding or negotiation made by the Contractor for work to be performed under a subcontract, including procurements of materials, or leases of equipment, each potential subcontractor or supplier will be notified by the Contractor of the contractor's obligations under this contract and the Nondiscrimination Acts and Authorities on the grounds of race, color, or national origin.

#### 7.3.3 Information and Reports: The Contractor will provide all information and reports required by the Acts, the Regulations, and directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the sponsor (County) or the Federal Aviation Administration to be pertinent to ascertain compliance with such Nondiscrimination Acts and Authorities and instructions. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish the information, the Contractor will so certify to the sponsor or the Federal Aviation Administration, as appropriate, and will set forth what efforts it has made to obtain the information.

#### 7.3.4 Sanctions for Noncompliance: In the event of a Contractor's noncompliance with the non-discrimination provisions of this contract, the sponsor (County) will impose such contract sanctions as it or the Federal Aviation Administration may determine to be appropriate, including, but not limited to:

- a. Withholding payments to the Contractor under the contract until the Contractor complies; and/or
- b. Cancelling, terminating, or suspending a contract, in whole or in part.

#### 7.3.5 Incorporation of Provisions: The Contractor will include the provisions of paragraphs 7.3.1 through 7.3.5 in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations, and directives issued pursuant thereto. Upon request by the County, Contractor will provide a copy of each subcontract to demonstrate that the above language has been inserted. The Contractor will take action with respect to any subcontract or procurement as the sponsor (County) or the Federal Aviation Administration may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the Contractor becomes involved in, or is threatened with litigation by a subcontractor, or supplier

because of such direction, the Contractor may request the sponsor to enter into any litigation to protect the interests of the sponsor. In addition, the Contractor may request the United States to enter into the litigation to protect the interests of the United States.

#### 7.4 Title VI List of Pertinent Nondiscrimination Acts And Authorities

- 7.4.1 During the performance of this contract, the Contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “Contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:
- Title VI of the Civil Rights Act of 1964 (42 USC § 2000d *et seq.*, 78 stat. 252) (prohibits discrimination on the basis of race, color, national origin);
  - 49 CFR part 21 (Non-discrimination in Federally-Assisted programs of the Department of Transportation—Effectuation of Title VI of the Civil Rights Act of 1964);
  - The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 USC § 4601) (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
  - Section 504 of the Rehabilitation Act of 1973 (29 USC § 794 *et seq.*), as amended (prohibits discrimination on the basis of disability); and 49 CFR part 27 (Nondiscrimination on the Basis of Disability in Programs or Activities Receiving Federal Financial Assistance);
  - The Age Discrimination Act of 1975, as amended (42 USC § 6101 *et seq.*) (prohibits discrimination on the basis of age);
  - Airport and Airway Improvement Act of 1982 (49 USC § 47123), as amended (prohibits discrimination based on race, creed, color, national origin, or sex);
  - The Civil Rights Restoration Act of 1987 (PL 100-259) (broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, the Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
  - Titles II and III of the Americans with Disabilities Act of 1990 (42 USC § 12101, *et seq.*) (prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities) as implemented by U.S. Department of Transportation regulations at 49 CFR parts 37 and 38;
  - The Federal Aviation Administration’s Nondiscrimination statute (49 USC § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
  - Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations (ensures nondiscrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations);
  - Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs [70 Fed. Reg. 74087 (2005)];
  - Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 USC § 1681, *et seq.*).

- 7.4.2** Contractor is required to insert the above Title VI List of Pertinent Nondiscrimination Acts and Authorities in every subcontract. Upon request by the County, Contractor will provide a copy of each subcontract to demonstrate that the above language has been inserted.

**7.5 Clean Air and Water Pollution Control**

Contractor agrees to comply with all applicable standards, orders, and regulations issued pursuant to the Clean Air Act (42 USC § 740-7671q) and the Federal Water Pollution Control Act as amended (33 USC § 1251-1387). The Contractor agrees to report any violation to the Owner immediately upon discovery. The Owner assumes responsibility for notifying the Environmental Protection Agency (EPA) and the Federal Aviation Administration.

Contractor must include this requirement in all subcontracts that exceeds \$150,000.

**7.6 Disadvantaged Business Enterprises**

**Contract Assurance (§ 26.13) –**

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 Department of Transportation-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 Owner deems appropriate, which may include, but is not limited to:

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

Contractor is required to insert the above language required under §26.13 in each subcontract. Upon request by the County, Contractor will provide a copy of each subcontract to demonstrate that the above language has been inserted.

**Prompt Payment (§26.29) –** The prime contractor agrees to pay each subcontractor under this prime contract for satisfactory performance of its contract no later than ten (10) days from the receipt of each payment the prime contractor receives from the County. The prime contractor agrees further to return retainage payments to each subcontractor within seven (7) days after the subcontractor's work is satisfactorily completed. Any delay or postponement of payment from the above referenced time frame may occur only for good cause following written approval of the County. This clause applies to both DBE and non-DBE subcontractors.

**Reporting Requirements.** The Contractor shall provide all information and reports required by the County, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the County to be pertinent to ascertain compliance with the regulations or directives. If you include a DBE in the bid, monthly reports of DBE contract awards, work performed by DBE firms, and payments to DBE firms shall be submitted to the Project Manager within ten (10) days of the end of each month for the life of the contract. Said reports shall be furnished to the Project Manager in the format specified in Attachment E.



**Commercially Useful Function.** The Contractor and its subcontractors shall cooperate and comply with any audits, inspections, or requests for information, required by the County 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.

**Compliance.** All Contractors or subcontractors for this DOT-assisted contract are hereby notified that failure to carry out the DBE obligations, as set forth above, shall constitute a breach of contract which, after notification to the U.S. Department of Transportation, may result in termination of the contract, or such other remedy as deemed appropriate by the County.

- 7.7 DBE Goal.** The County has not established a contract specific goal for this opportunity but has established an overall DBE goal for airport projects. The overall DBE goal for airport projects for federal fiscal years 2023 through 2025 is 6.3% for the utilization of firms owned and controlled by socially and economically disadvantaged persons. The DBE goal applicable to subsequent periods will be posted at <https://www.ocair.com/business/business-opportunities/dbe-acdbe/>. Bidders are not required to submit Good Faith Effort (GFE). Bidders are encouraged to make efforts to assist the airport in meeting its applicable overall DBE goal. Bidders can search for DBEs that perform the types of work involved on the project by using the California Unified Certification Program database at <https://californiaucp.dbesystem.com/>.

**Eligibility of DBEs.** Any firm wishing to qualify as a DBE is invited to apply for certification from the California Unified Certification Program (CUCP). Information and instructions for applying for DBE certification may be found at <https://dot.ca.gov/programs/civil-rights>.

**Requested Information.** Bidders who include DBE participants are asked to submit the following information regarding intended participation by DBEs:

- a. The names and addresses of DBE firms that will participate in the contract.
- b. A description of the work that each DBE will perform.
- c. The annual gross receipts category for each DBE firm.
- d. The age of each DBE firm.
- e. The dollar amount of participation by each named DBE firm and the dollar amount to be counted towards the goal.

This information should be submitted on the List of DBE Firms form provided in the bid specification. The fully completed form shall also be attached to this contract in the format specific in Exhibit F, using Contractor's cost proposal to complete the anticipated dollar amount of participation by each named DBE firm and the dollar amount to be counted towards the goal.

## **7.8 Texting When Driving**

In accordance with Executive Order 13513, "Federal Leadership on Reducing Text Messaging While Driving," (10/1/2009) and DOT Order 3902.10, "Text Messaging While Driving," (12/30/2009), the Federal Aviation Administration encourages recipients of Federal grant funds to adopt and enforce safety policies that decrease crashes by distracted drivers, including policies to ban text messaging while driving when performing work related to a grant or subgrant.

In support of this initiative, the Owner encourages the Contractor to promote policies and initiatives for its employees and other work personnel that decrease crashes by distracted drivers, including

policies that ban text messaging while driving motor vehicles while performing work activities associated with the project. The Contractor must include the substance of this clause in all sub-tier contracts exceeding \$3,500 that involve driving a motor vehicle in performance of work activities associated with the project.

### **7.9 Energy Conservation Requirements**

Contractor and Subcontractor agree to comply with mandatory standards and policies relating to energy efficiency as contained in the state energy conservation plan issued in compliance with the Energy Policy and Conservation Act (42 USC 6201 *et seq.*).

### **7.10 Certification Regarding Lobbying**

The Bidder or Offeror certifies by signing and submitting this bid or proposal, to the best of his or her knowledge and belief, that:

(1) No Federal appropriated funds have been paid or will be paid, by or on behalf of the Bidder or Offeror, to any person for influencing or attempting to influence an officer or employee of an agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with the awarding of any Federal contract, the making of any Federal grant, the making of any Federal loan, the entering into of any cooperative agreement, and the extension, continuation, renewal, amendment, or modification of any Federal contract, grant, loan, or cooperative agreement.

(2) If any funds other than Federal appropriated funds have been paid or will be paid to any person for influencing or attempting to influence an officer or employee of any agency, a Member of Congress, an officer or employee of Congress, or an employee of a Member of Congress in connection with this Federal contract, grant, loan, or cooperative agreement, the undersigned shall complete and submit Standard Form-LLL, "Disclosure Form to Report Lobbying," in accordance with its instructions.

(3) The undersigned shall require that the language of this certification be included in the award documents for all sub-awards at all tiers (including subcontracts, subgrants, and contracts under grants, loans, and cooperative agreements) and that all sub-recipients shall certify and disclose accordingly.

This certification is a material representation of fact upon which reliance was placed when this transaction was made or entered into. Submission of this certification is a prerequisite for making or entering into this transaction imposed by section 1352, title 31, U.S. Code. Any person who fails to file the required certification shall be subject to a civil penalty of not less than \$10,000 and not more than \$100,000 for each such failure.

### **7.11 Occupational Safety and Health Act Of 1970**

All contracts and subcontracts that shall incorporate by reference the requirements of 29 CFR Part 1910 with the same force and effect as if given in full text. The employer must provide a work environment that is free from recognized hazards that may cause death or serious physical harm to the employee. The employer retains full responsibility to monitor its compliance and their subcontractor's compliance with the applicable requirements of the Occupational Safety and Health Act of 1970 (20 CFR Part 1910). The employer must address any claims or disputes that pertain to a referenced requirement directly with the U.S. Department of Labor – Occupational Safety and Health Administration.

**7.12 Veteran's Preference**

In the employment of labor (excluding executive, administrative, and supervisory positions), the Contractor and all sub-tier contractors must give preference to covered veterans as defined within Title 49 United States Code Section 47112. Covered veterans include Vietnam-era veterans, Persian Gulf veterans, Afghanistan-Iraq war veterans, disabled veterans, and small business concerns (as defined by 15 USC 632) owned and controlled by disabled veterans. This preference only applies when there are covered veterans readily available and qualified to perform the work to which the employment relates.

**7.13 Seismic Safety**

In the performance of design services, the Consultant agrees to furnish a building design and associated construction specification that conform to a building code standard that provides a level of seismic safety substantially equivalent to standards as established by the National Earthquake Hazards Reduction Program (NEHRP). Local building codes that model their building code after the current version of the International Building Code (IBC) meet the NEHRP equivalency level for seismic safety. At the conclusion of the design services, the Consultant agrees to furnish the Owner a "certification of compliance" that attests conformance of the building design and the construction specifications with the seismic standards of NEHRP or an equivalent building code.

County of Orange, OC Public Works  
AECOM Technical Services, Inc.

MA-080-24010110

IN WITNESS WHEREOF, the Parties hereto have executed this Contract on the dates opposite their respective signatures:

**AECOM TECHNICAL SERVICES, INC.,**  
a California Corporation,

Date: 8/17/2023

By: Matt G. Ulukaya, PE, Vice President

Signature

Matt G. Ulukaya, PE, Vice President

Print Name & Title

*(If a corporation, the document must be signed by two corporate officers. The 1<sup>st</sup> must be either Chairman of the Board, President or any Vice President.)*

Date: 8/17/2023

By: 

Signature

Bryan Rash, Assistant Secretary

Print Name & Title

*(If a corporation, the 2nd signature must be either the Secretary, an Assistant Secretary, the Chief Financial Officer, or any Assistant Treasurer)*

**COUNTY OF ORANGE,**  
a political subdivision of the State of California

Date: \_\_\_\_\_

By: \_\_\_\_\_

Print

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**APPROVED AS TO FORM**

Office of the County Counsel  
Orange County, California

By: Christine Nguyen, Deputy County Counsel

Deputy

Signature: Christine Nguyen, Deputy County Counsel

Date: 8/17/2023

**ATTACHMENT A: GENERAL SCOPE OF WORK****I. PURPOSE**

The purpose of the project is to replace aging pavement on critical taxiways and to bring John Wayne Airport into compliance with current Federal Aviation Administration (FAA) separation requirements on the taxiways and vehicle service road.

**II. PROJECT DESCRIPTION**

The project will reconstruct Taxiways "A", "D", and "E" east of Runway 2L-20R. The project will also provide for a slight realignment of Taxiway "A" just south of the South Remain Over Night (SRON) and improvement to and realignment of the vehicle service road as necessary to maintain the required safety clearances along Taxiway "A". The reconstruction of Taxiways "A", "D", and "E" measures approximately 2,800 feet, 250 feet, and 500 feet, respectively. The length of improvement and realignment of the vehicle service road is approximately 3,200 feet adjacent to Taxiway "A". Because of the criticality and location of the taxiways, careful planning which will maximize safety and minimize impact to airport operations will be essential.

**III. SCOPE OF SERVICES**

The professional services to be provided by the Consultant will include civil engineering, electrical engineering, geotechnical engineering, and survey services to accomplish the following in conformance with applicable federal, state, and local statutes and JWA and OCPW requirements, including the OCPW A-E Guide.

The Consultant will provide the required professional services to design the reconstruction and realignment, as necessary to meet required safety clearances, of Taxiway "A" from its south end to roughly Taxiway "H", Taxiway "D" between Runway 2L and Taxiway "A", and Taxiway "E" between Runway 2L and Taxiway "A". Professional services may include design of modifications to the connecting GA run-ups and the compass rose, as well as the adjacent vehicle service road and the east SIDA gate.

The Consultant, the Construction Manager at Risk, and the owner will work collaboratively during the design phase.

Designing a project that can be constructed safely and that limits impact to airport operations is critical and of utmost importance.

This work will be performed and constructed under a Federal Aviation Administration Airport Improvement Program grant to JWA.

Consultant shall provide a design project for construction that meets the project intent and requirements for which the construction cost does not exceed the amount budgeted by the County. If initial project construction cost exceeds the amount budgeted by the County, Consultant shall, at no additional cost to County, perform such redesign, and other services as may, in the opinion of OCPW Director, be required to produce a design project for construction which meets the project intent and requirements and is within the County's budgeted amount.

**Phase 1 – Preliminary Design**

The preliminary design phase is intended to identify and evaluate alternatives for the project to assure cost effective and practical solutions for the work items identified. The Consultant will complete its evaluation of alternatives through contacts with local authorities and review of the existing conditions, current vs. projected operations, and available field investigations, etc., all while using practical design

approach. The design will take advantage of local knowledge and experience and utilize expertise from recent construction projects to design a cost-effective project which prioritizes safety and results in competitive construction bids, should traditional delivery method be employed. Activities include but are not limited to:

1. Coordinate with Airport Operations, FAA tower, and airline personnel to determine how best to minimize impacts to day-to-day airport operations;
2. Conduct a Project Design Kick-off Meeting with project stakeholders;
3. Coordinate with OCPW survey;
4. Prepare an overall construction phasing plan which maximizes project constructability and minimizes interference with airport operations. The Consultant's phasing plan must take into account other airport construction projects;
5. Determine aircraft usage through coordination with County and information furnished by the Airport. Pavement to be designed to meet anticipated aircraft traffic;
6. Validate CMAR's master schedule for implementation of the project, including key activities and major project milestones;
7. Prepare a design Quality Control plan to be shared with County;
8. Coordinate with County environmental staff on potential storm drain improvements.
9. Inspect the potentially affected existing storm system to ensure storm drain facilities are in acceptable conditions for future loading. Services may include video inspection;
10. Work with Department of Homeland Security (DHS) and Airport Operations for relocation of Secure Identification Display Area (SIDA) access gate;
11. Develop project justification deliverables for FAA AIP Grant Funding (Project limits, pavement materials, project delivery method, etc.);
12. Determine pavement design considerations applicable for FAA Advisory Circular 150/5320-6G, Airport Pavement Design and Evaluation, etc.;
13. Review and recommend Airport Design considerations applicable for FAA Advisory Circular 150/5300-13, Airport Design (latest version).
14. Determine if a Modification to Agency Airport Design, Construction, and Equipment Standards is required (MOS). Request MOS per FAA Order 5300.1G, Modification to Agency Airport Design Construction, and Equipment Standards, if required.

#### Phase 2 – Engineering Design

1. Evaluate local conditions.
  - a. Evaluate drainage alternatives and potential storm drain improvements;
  - b. Review electrical lighting layouts and determine system relocation capacities. Field verify and develop butterfly diagrams for all affected electrical circuits/manholes, including the homerun to the airfield lighting vault;
  - c. Review airfield signage and markings and determine necessary system relocation/adjustments.
2. Review and evaluate project layout;
  - a. Verify master plan dimensions and data;
  - b. Review findings and recommendations with County personnel.
3. Complete a soils investigation, soils report, and recommendations including:
  - a. Field Exploration;
  - b. Laboratory Testing;
  - c. Soil stabilization recommendations.
4. Complete pavement type and section alternatives analysis and provide recommendations including:

- a. Conduct an initial cost analysis, life-cycle cost analysis, and analysis of locally available resources for up to three alternatives;
  - b. Strategize bidding procedures and pavement section alternatives to provide a basis for competitive bidding, if traditional delivery method is utilized.
5. Complete preliminary plan and profile design for the taxiway and service road areas;
  6. Complete preliminary movement area lighting, signing, and system circuitry layout;
  7. Provide recommendations for construction phasing to County for review;
  8. Validate CMAR's estimates of probable construction costs for the recommended alternatives;
  9. Develop Construction Safety Phasing Plan, in accordance with FAA AC 150/5370-2G Operational Safety on Airports during Construction;
  10. Complete the Preliminary Engineer's Design Report including:
    - a. Geotechnical investigation;
    - b. Preliminary plans;
    - c. Pavement section design and analysis;
    - d. Drainage design analysis;
    - e. Validate CMAR's estimates of probable construction costs;
    - f. Final summary and recommendations;
    - g. Phasing and scheduling recommendations.
  11. Incorporate comments from County and the FAA.

### Phase 3 - Final Design

The Consultant will provide well-defined construction requirements with selected alternatives as appropriate to provide a basis for competitive construction bids, if applicable. Construction schedules will provide for the best possible weather conditions and the least possible impact to airport operations. Consultant will assist County with the advertisement, notification of local airport users, and generally complete the final construction contract documents for the project. The following outline describes in greater detail the tasks and products:

1. Incorporate earlier design comments and respond as necessary to requests for additional information;
2. Provide final design drawings, specifications, and validate CMAR's final estimate of probable construction costs and schedule for the project;
3. Provide Final Engineer's Design Report;
4. Develop specifications using applicable FAA Advisory Circulars, including 150/5370-10, Standards for Specifying Construction of Airports, as amended, and utilize standard provisions supplied by the County;
5. Develop a safety plan in accordance with AC 150/5370-2, Operational Safety on Airports During Construction and assist with FAA safety requirements;
6. Design all improvements in accordance with FAA standards and guidelines and in accordance with the Airport Certification Manual;
7. Coordinate the design of the project with existing and ultimate grades established at adjacent areas;
8. Provide for all required design of utilities and services within the area defined in the preliminary design;
9. Complete final quantity calculations;
10. Solicit FAA review and approval;
11. Assist County with establishment of Owner's contingency amount;
12. Assist County with preconstruction services such as assumptions and clarifications related to the GMP;
13. Assist County with advertising, as necessary, and interpretation of project requirements;

### Phase 4 – Construction Services

During the construction phase of the project, the Consultant will assist the County to monitor and document progress for quality and cost, review contractor payment requests, continually inform the County on project

progress and problems, conduct the final project inspection and complete the associated certification. Other activities include but are not limited to:

1. Assist with pre-bid conference and bidding process, if necessary;
2. Attend preconstruction conference;
3. Provide technical assistance and recommendations to County;
4. Provide review of submittals and shop drawings;
5. Respond to RFIs and assist with change orders;
6. Conduct a final project inspection with County and FAA;
7. Prepare record drawings and the final project report.

#### IV. DETAILED SCOPE OF SERVICES

The project will reconstruct Taxiways "A", "D", and "E" east of Runway 2L-20R. The project will also provide for a slight realignment of Taxiway "A" just south of the SRON and improvement to and realignment of the vehicle service road as necessary to maintain the required safety clearances along Taxiway "A." The reconstruction of Taxiways "A", "D", and "E" measures approximately 2,800 feet, 250 feet, and 500 feet, respectively. The length of improvement and realignment of the vehicle service road is approximately 3,200 feet adjacent to Taxiway "A."

The preliminary phasing concept assumes that a temporary Aircraft Design Group (ADG) III by-pass taxiway will be constructed east of Taxiway "A" to maintain commercial aircraft traffic to the terminal, and that ADG IV aircraft (Primarily cargo) can use existing Taxiway "B" and cross the runways via Taxiway "H" to the cargo apron. Based on these assumptions, several design elements are required:

1. Strengthen Taxiway "H" as recommended under the 2021 Airport Pavement Management System (APMS) to accommodate the heavier cargo aircraft and reduce the potential for unexpected pavement failures during the life of the project.
2. Design a temporary ADG III by-pass taxiway in compliance with FAA standards, include new aircraft rated pavements, markings, and solar powered taxiway edge lights. The by-pass taxiway will be designed up to six (6) phases to maintain access for the adjacent Fixed Base Operators (FBO's).
3. In addition to the temporary ADG III taxiway, design will also be provided for a temporary vehicle service road to maintain access for airport staff, tenants, and users of the airport. The vehicle service road will be designed up to six (6) phases.
4. However, if the above preliminary phasing concept is not feasible based on stakeholder input, A-E will develop an alternative phasing concept to satisfy stakeholder concerns.

Additional project improvements include the following:

1. Relocation of the East Secure Identification Display Area (SIDA) Gate
2. Relocation of the East SIDA Gate Electrical Panel
3. Concrete masonry unit (CMU) Blast Wall Modifications
4. Reconfiguration of the Southeast Run-up Area
5. Reconfiguration of the Midfield Run-up Area

It is assumed that the project delivery method will be Construction Manager At-Risk (CMAR), and A-E will work collaborating with the CMAR and County during the design phase.

In addition, OCPW Survey will provide all required topographic surveys for the design.

This project is eligible for reimbursement from the Airport Improvement Program (AIP) and will comply to the requirements of those programs.



The Scope of Services will be in accordance with OCPW A-E Guide document. In the case of any conflicts, the A-E Guide will take precedence, except for the items explicitly listed below including:

1. County to provide topographic surveying services and survey controls.
2. Construction Management (CM) team to provide oversight of construction, perform material testing and inspection services, evaluate test results, conduct labor interviews, review monthly Pay Apps, and review Construction Change Orders.
3. CMAR will provide cost estimating services and scheduling services during design and construction.

## V. WORK BREAKDOWN STRUCTURE

The project will be implemented using the following work breakdown structure:

### **TASK 1 – PROJECT MANAGEMENT**

**Task 1.1 Project Administration and Coordination.** This task involves the overall management of the project to provide compliance with the scope of services, schedule, budget, quality, and coordination of the project with the County. It involves coordination by the Project Manager and other key staff in establishing schedule and budgets, monitoring adherence to schedule and project performance, management of subconsultants, intra-team project management, and quality control. This task would include weekly teleconferencing and other meetings as needed to coordinate with County, subconsultants, stakeholders, and FAA.

This task will also include preparation of a master schedule for implementation of the project, including key activities and major project milestones, and preparation of a design Quality Control plan to be shared with County.

**Task 1.2 Weekly Coordination Meetings (Virtual).** Conduct weekly design coordination meetings with the County through project completion (assumed duration of 8 months and thirty-four (34) weekly virtual on-line meetings with further weekly coordination meetings conducted as needed and upon mutual agreement). A-E will prepare the agenda, provide meeting notes, and action items.

This task includes a Project Design Kick-off Meeting with project stakeholders in-person.

It is assumed that non-scheduled and quick discussions and phone calls are inherent part of the project and are considered incidental to the design process and would not be considered as a formal coordination meeting.

**Task 1.3 Coordination Meetings with FAA, Airport Operations and Air Traffic Control Tower.** Conduct coordination meetings with the FAA staff, Airport Operations and Air Traffic Control Tower staff to discuss construction phasing concepts and controls needed to minimize impacts and maintain safety to airport operations. For budgeting purposes, based on the size and complexity of the project, A-E has assumed eight (8) in-person meetings. A-E will prepare the agenda, provide meeting notes, and action items.

It is assumed that non-scheduled and quick discussions and phone calls are inherent part of the project and are considered incidental to the design process and would not be considered as a formal coordination meeting.

**Task 1.4 Coordination Meetings with Airlines, Fixed Base Operators, and GA Community.** Conduct coordination meetings with the Airlines, Fixed Base Operators and GA Community to discuss construction phasing concepts and controls needed to minimize impacts and any associated

concerns. Assume twelve (12) in-person meetings. A-E will prepare the agenda, provide meeting notes, and action items.

Assume that County and JWA staff will assist in developing the attendee list for relevant stakeholders and facilitate participation and support these meetings as the airport owner.

**Task 1.5 Coordination Meetings with Other Stakeholders.** Conduct coordination meetings with the other stakeholders to discuss general construction phasing concepts and impacts of the project, and any associated concerns. Assume twelve (12) in-person meetings. A-E will prepare the agenda, provide meeting notes, and action items.

The stakeholders would include, but is not limited to SNA Fuel, Fire Department (Aircraft Rescue and Fire Fighting), Orange County Sanitation District, and other tenants.

Assume that County and JWA staff will assist in developing the attendee list for relevant stakeholders and facilitate participation and support these meetings as the airport owner.

## **TASK 2 – FIELD INVESTIGATION AND DATA COLLECTION**

**Task 2.1 Site Investigations and Records Research.** A-E will perform field investigations including visual assessment of the types and severities of the pavement distresses, paving limits, hangar structures, and other features within the project limits including manhole structures, pavement markings, airfield lighting, and the existing storm drain lines and will clearly document all findings.

Records review will include research of existing as-built drawings, geotechnical studies and reports, and the current and future aircraft fleet mix and traffic volumes including commercial, cargo, and general aviation aircraft traffic for the proposed pavement areas.

With assistance from the County, A-E will develop the aircraft fleet mix and traffic volumes for the pavement design including any new aircraft types or services anticipated at the airport.

Assumptions:

1. Eight (8) site visits with three (3) A-E staff over the duration of the project (with further visits conducted as needed and upon mutual agreement).

**Task 2.2 Preparation of Field Investigation Safety Plan.** Prior to field investigations, topographic surveys, and geotechnical investigations, A-E will prepare and submit the necessary field investigation plans and safety plans to the County for approval including the FAA 7460-1 for the drill rig mast. Receipt of the FAA determination is assumed to be 45 to 60 days.

**Task 2.3 Obtain Airport Security Badges.** A-E personnel will apply for a security badge and attend the mandatory courses to obtain escort and driving privileges in the non-movement area. Escort vehicles will obtain the required insurance, checkered flag, and ID tags. Effort will also include compliance with regular badge audits by airport security.

Assume three (3) local A-E staff will obtain and maintain airport security badges for the duration of design and construction of the project.

**Task 2.4 Airport Escorts.** As needed, A-E will serve as airfield escorts for the following site investigations. This work also includes logistics of obtaining portable light towers and other needs required for the investigation work at night.

1. Civil Investigations – eight (8) times
2. Geotechnical Investigation - 14 times
3. Non-Destructive Pavement Testing (NDT) and Ground Penetrating Radar (GPR) – four (4) times
4. Electrical Investigation – six (6) times

Assumptions:

1. Two (2) A-E escorts over thirty-two (32) site visits.
2. Survey team will obtain airport badges and do not require escort
3. Assume three (3) badge audits by airport security

### **TASK 3 – 30% SCHEMATIC DESIGN**

**Task 3.1 Airfield Geometry Analysis and Development.** A-E will develop and prepare exhibits for the new alignment for Taxiways A, D and E with fillets in accordance with FAA AC150/5300-13B for the design aircraft. The exhibits will also include relocation of the vehicle service road (VSR), and consider the surrounding FBO's developments, existing GA run-up area, existing compass rose, existing or future hangars, utilities, and any other known facilities that may be impacted. This includes analysis for accommodating future aircraft at the airport which may include the B787 aircraft.

This task will also determine if any FAA Modification to Standards are required (MOS) for the project and develop concepts to resolve issues. If required, A-E will prepare the justifications for any Request MOS per FAA Order 5300.1G, Modification to Agency Airport Design Construction, and Equipment Standards.

**Task 3.2 Storm Drain Analysis and Development.** A-E will develop and prepare exhibits for the storm drain improvements and coordinate with County environmental staff. This task also includes analysis of affected existing storm system to ensure storm drain facilities are in acceptable conditions for future aircraft loading including performing video inspection of impacted storm drain lines.

It is assumed that trench drains or slot drains can be provided to separate the airport storm water and tenant leasehold storm water as required by the County's environmental department.

A-E will perform a localized hydrology analysis of the Taxiway A, D, E and GA Apron site to identify drainage considerations as a result of the proposed pavement reconstruction project. The data will be used to calculate number and size of the drainage inlets and pipe sizes as required for collecting storm water and to control excess storm water surface runoff from this area and connect to the existing drainage system.

**Task 3.3 Water Quality Management Plan.** A-E will develop and prepare the Water Quality Management Plan (WQMP) for Type 1 Projects in accordance with the County of Orange Stormwater Requirements Template including providing the applicable 30% checklists and attachments.

**Task 3.4 SIDA Gate Relocation and Development.** A-E will develop plans for relocation of East Secure Identification Display Area (SIDA) access gate. This will include preparing exhibits and coordinating with Department of Homeland Security (DHS) and Airport Operations as required.

**Task 3.5 Conceptual Pavement Design.** A-E will develop preliminary pavement design in accordance with FAA AC150/5320-6G, Airport Pavement Design and Evaluation for both Asphalt Concrete and

Portland cement Concrete (PCC) options. Life cycle cost analysis will be provided for each pavement type. Refer to Task 12.

The pavements will be designed to achieve a minimum 20-year or greater design life. A-E will prepare three (3) alternatives for subgrade stabilization to address the in-situ soils properties and mechanics. A-E will also analyze opportunities to minimize construction duration and value engineering alternatives to reduce cost.

**Task 3.6 Develop Schematic Drawings.** A-E will prepare schematic 30% drawings. Drawings will be submitted in electronic PDF. The construction drawings will include the following:

1. General Plans
2. Construction Phasing Plan and Details
3. Demolition Plan
4. Horizontal Control Plan
5. Typical Pavement Sections
6. Pavement Plan
7. Utility Relocation Plans
8. Sediment and Erosion Control Plans
9. East SIDA Gate Relocation Plan and Details
10. East SIDA Gate Electrical Panel Relocation and Details

The design will also identify any underground utilities that may need to be relocated such as water, fire, sewer, etc. including associated above ground structures such as fire hydrants, valves, etc...

**Task 3.7 Develop Preliminary Construction Safety and Phasing Plan (CSPP).** A-E will begin development of preliminary CSPP in compliance with FAA AC 150/5370-2G. The construction phasing plan should maximize project constructability and minimizes interference with airport operations and will consider other airport construction projects.

**Task 3.8 Review Cost Estimate.** CMAR will develop a probable construction cost for bidding with the quantities and associated unit prices. A-E/Subconsultant will review the quantities and unit prices including escalation and market conditions which may affect the project. Refer to Task 9.

**Task 3.9 Design Review Meeting.** Within two (2) weeks of the submittal, A-E will meet with the County and CMAR to discuss the project and any comments. A-E will answer questions about the project design, and document review comments in comment/resolution log. This review will also include value engineering discussions.

#### **TASK 4 – 60% DESIGN DEVELOPMENT**

**Task 4.1 Update Drawings.** A-E will prepare 60% drawings and will incorporate the County's 30% review comments and update the design of the project. Drawings will be submitted in electronic PDF. The construction drawings will include the following:

1. General Plans
2. Construction Phasing Plan and Details (Design of by-pass taxiway and vehicle service road)
3. Electrical Phasing Plan and Details
4. Demolition Plan
5. Horizontal Control Plan
6. Typical Pavement Sections and Details
7. Pavement Plan and Profile (Taxiways and VSR)
8. Taxiway H Rehabilitation Plan

9. Grading Plan
10. Storm Drain Plan
11. Utility Relocation Plans
12. Sediment and Erosion Control Plans
13. Pavement Marking Plan and Details
14. East SIDA Gate Relocation Plan and Details
15. East SIDA Gate Electrical Panel Relocation and Details
16. CMU Blast Wall Modifications Plan and Details
17. Southeast Run-up Area Plans
18. Midfield Run-up Area Plans
19. Airfield Lighting Plans and Details
20. Airfield Signage Plans and Details

Drawings include Taxiways A, D, and E; Vehicle Service Roads; SIDA Gate Relocation; CMU blast wall modifications.

Design will include the following elements:

1. Provide FAA TSA and TOFA clearance and demonstrate compliance with FAA standards for adjacent facilities such as vehicle service roads, parking aprons, and run-up areas.
2. Include modifications of striping for adjacent apron areas, vehicle service roads, and lead-in into FBO leaseholds as required to maintain airport operations.
3. A-E will also develop an existing utility plan and provide to the CMAR for pothole field verification.
4. Design will also include reconfiguring the southeast run-up area and the mid-field run-up area.
5. The pavement markings plans will include helicopter aiming points on Taxiway A.

**Task 4.2 Develop Engineer's Design Report.** A-E will develop the Engineer's Design Report and will include a description of the following project elements:

1. Taxiway geometry and alignment (horizontal and vertical);
2. Geotechnical investigation;
3. Topographical survey (provided by the County);
4. Pavement section design and analysis;
5. Drainage design analysis;
6. Pavement markings and striping;
7. Taxiway lighting and signage;
8. Estimates of probable construction costs (prepared by CMAR);
9. Final summary and recommendations;
10. Phasing and scheduling recommendations (schedule prepared by CMAR)

**Task 4.3 Develop and Update Construction Safety and Phasing Plan.** A-E will develop and update the CSPP under Task 3.7 and will incorporate the County's 30% review comments.

**Task 4.4 Develop and Update Storm Water Design.** A-E will update the localized hydrology analysis of the Taxiway A, D, E and GA Apron site to identify drainage considerations as a result of the proposed pavement reconstruction project.

**Task 4.5 Develop and Update Water Quality Management Plan.** A-E will develop and update the Water Quality Management Plan (WQMP) for Type 1 Projects in accordance with the County of Orange Stormwater Requirements Template including providing the applicable 60% checklists and attachments.

**Task 4.6 Develop and Update Pavement Design.** A-E will complete the pavement type and section alternatives analysis and provide recommendations to the County. Based on the County's selected pavement option for either AC or PCC pavements, A-E will further develop and update the pavement design using the FAARFIELD pavement design program with the projected future forecast aircraft fleet mix and traffic loads.

A-E will also conduct an initial cost analysis, life-cycle cost analysis, and analysis of locally available resources for up to three alternatives, and also provide soil stabilization recommendations.

**Task 4.7 Develop and Update Technical Specifications.** A-E will develop the technical specifications in compliance with AC 150/5370-10H. The specifications will include the preparation of the bid schedule.

**Task 4.8 Review of Cost Estimate.** CMAR will develop and update the probable construction cost for bidding with the quantities and associated unit prices. A-E /Subconsultant will review the development of the quantities and unit prices. Refer to Task 9.

**Task 4.9 Design Review Meeting.** Within two (2) weeks of the submittal, A-E will meet with the County and CMAR to discuss the project and any comments. A-E will answer questions about the project design, and document review comments in comment/resolution log. This review will also include value engineering discussions.

**Task 4.10 Preparation and Participation in Pre-SRA Meeting.** A-E will support and participate in the Preliminary Safety Risk Assessment (pre-SRA) meeting and will assist the Facilitator (Subconsultant). Includes preparation effort and discussions with the Facilitator, and review of the meeting notes.

**Task 4.11 Condition Assessment of Underground Utilities.** A-E will provide as-needed condition assessment of underground utilities, which may include physical inspections and/or video recording of pipes to determine structural integrity, damage, or suspected leaks. This Allowance task will be performed on a Time and Material basis, and A-E will be required to obtain specific County authorization before proceeding with any work.

## **TASK 5 – 90% DESIGN DEVELOPMENT**

It is assumed that the CMAR will bid these documents and begin any permitting process.

**Task 5.1 Develop and Update Drawings.** A-E will prepare 90% drawings and will incorporate the County's 60% review comments and update the design of the project. Drawings will be submitted in electronic PDF. The construction drawings will include the following:

1. General Plan
2. Construction Phasing Plan and Details
3. Electrical Phasing Plan and Details
4. Demolition Plan
5. Horizontal Control Plan
6. Typical Pavement Sections and Details
7. Pavement Plan and Profile
8. Grading Plan
9. Erosion Control Plan and Details
10. Pavement Marking Plan and Details
11. Airfield Lighting Plans and Details

## 12. Airfield Signage Plans and Details

**Task 5.2 Develop and Update Engineer's Design Report.** A-E will develop and update the Engineer's Design Report under Task 4.2.

**Task 5.3 Develop and Update Water Quality Management Plan.** A-E will develop and update the Water Quality Management Plan (WQMP) for Type 1 Projects in accordance with the County of Orange Stormwater Requirements Template including providing the applicable 90% checklists and attachments.

**Task 5.4 Develop and Update Construction Safety and Phasing Plan.** A-E will develop and update the CSPP and will incorporate the County's 60% review comments under Task 4.3.

**Task 5.5 Develop and Update Technical Specifications.** A-E will develop and update the technical specifications and will incorporate the County's 60% review comments under Task 4.7. The specifications will include the updates of the bid schedule. A-E will review the County's Standard Contract Provisions and General Conditions and provide comments for conflicts with the technical specifications.

**Task 5.6 Review Cost Estimate.** CMAR will develop and update the probable construction cost with the quantities and associated unit prices. A-E /Subconsultant will review the development of the quantities and unit prices.

**Task 5.7 Design Review Meeting.** Within two (2) weeks of the submittal, A-E will meet with the County to discuss the project and any comments. A-E will answer questions about the project design, and document review comments in comment/resolution log.

**Task 5.8 Preparation and Participation in SRM Panel Meeting.** A-E will support and participate in the Safety Risk Management (SRM) panel meeting and will assist the Facilitator. Includes preparation effort and discussions with the Facilitator, and review of the draft SRM document.

## **TASK 6 – FINAL CONSTRUCTION DOCUMENT PHASE**

It is assumed that A-E will prepare one (1) final design package, and it will be the responsibility of the CMAR to develop individual trade packages. Any interim or temporary conditions will be the responsibility of the CMAR. Drawing revision (bubbling, etc.,) will be used once the first set of documents are advertised for bidding.

**Task 6.1 Update Drawings.** A-E will prepare 100% drawings and will incorporate the County's 90% review comments and update the design of the project. Drawings will be submitted in electronic PDF. The construction drawings will include the following:

1. General Plan
2. Construction Phasing Plan and Details
3. Electrical Phasing Plan and Details
4. Demolition Plan
5. Horizontal Control Plan
6. Typical Pavement Sections and Details
7. Pavement Plan and Profile
8. Grading Plan
9. Storm Drain Plan and Details
10. Erosion Control Plan and Details
11. Pavement Marking Plan and Details

12. Airfield Lighting Plans and Details
13. Airfield Signage Plans and Details

**Task 6.2 Update Engineer's Design Report.** A-E will update the written narrative report including any exhibits, calculations, and figures under Task 5.2.

**Task 6.3 Update Water Quality Management Plan.** A-E will update the Water Quality Management Plan (WQMP) for Type 1 Projects in accordance with the County of Orange Stormwater Requirements Template including providing the applicable final checklists and attachments.

**Task 6.4 Update Construction Safety and Phasing Plan.** A-E will update the CSPP and will incorporate the County's 90% review comments under Task 5.4.

**Task 6.5 Update Technical Specifications.** A-E will develop the technical specifications and will incorporate the County's 90% review comments under Task 5.4. The specifications will include the updates of the bid schedule. A-E will review the County's Standard Contract Provisions and General Conditions and provide comments for conflicts with the technical specifications.

**Task 6.6 Review Updated Cost Estimate.** CMAR will update the probable construction cost with the quantities and associated unit prices. A-E/Subconsultant will review the development of the quantities and unit prices. Refer to Task 9.

**Task 6.7 Design Review Meeting.** Within two (2) weeks of the submittal, A-E will meet with the County to discuss the project and any comments. A-E will answer questions about the project design, and document review comments in comment/resolution log.

**Task 6.8 Prepare Final Bid Documents.** A-E will prepare the final (bid ready) Plans, Specifications, and Estimate. A-E will incorporate the final review comments from the County and FAA and finalize the bid documents.

Deliverables will include one (1) set of full-sized PDF drawings to the County with electronic signature.

**Task 6.9 Preparation and Submission of FAA 7460.** A-E will prepare and submit two (2) FAA 7460's to the OE/AAA website at the completion of design and at the beginning of construction.

**Task 6.10 Preparation of Final SRM Documents.** A-E will assist in preparing and reviewing the final SRM report including verifying that stakeholder and SRM panel comments are incorporated into the final document.

## **TASK 7 – ELECTRICAL ENGINEERING – LEAN ENGINEERING**

**Task 7.1 Field Investigation.** LEAN will perform a detailed field investigation to confirm the locations of the base cans, light fixtures, and cables. It is assumed that the work will be performed over two (2) nights. Assume Airport maintenance will open/close light fixtures. Field investigation will also include parts of Taxiway A, D and E outside the project work area.

**Task 7.2 30% Schematic Design.** The following represents a brief description of the airfield electrical work for the project along with some of the major items of work:

1. New Taxiway edge lighting along Taxiway A, D, and E pavement reconstruction area.
2. New Taxiway centerline lighting on Taxiway E including realignment of lead-off lights on the runway.
3. New Taxiway edge lights at all intersections where the new pavements are being constructed.



4. Install new airfield lighting cable, lights, and transformers in the pavement reconstruction area.
5. Provide temporary lighting as required due to the multiple phasing.
6. Investigate and adjust the adjustment of any handholes in the area.

**Task 7.3 60% Design Development.** Lean will provide the following elements for the 60% design.

1. General Notes/Symbols
2. Demo Plans
3. Area Plans
4. Vault Plan
5. AFL Circuit Map/Single Lines
6. AFL Signage Plan
7. AFL Sign Schedule
8. AFL Fixture Schedule
9. AFL Base Can Coordinates
10. Temporary Electrical Drawings
11. Vault Reflective Plans
12. Vault Single Lines
13. Voltage Drop Calculations
14. Specifications
15. Cost Estimate
16. Internal QC/QA.
17. Respond to Prime/Client comments
18. Design Report

**Task 7.4 90% Design Development.** Lean will provide the following elements for the 60% design.

1. General Notes/Symbols
2. Demo Plans
3. Area Plans
4. Details
5. AFL Wiring Diagrams/Circuit Maps
6. AFL Base Can Coordinates
7. Temporary Electrical Drawings
8. Vault Reflective Plans
9. Vault Single Lines
10. Specifications
11. Cost Estimate
12. Internal QC/QA
13. Respond to Prime/Client comments
14. Design Report

**Task 7.5 100% Final Construction Documents Submission.** Lean will provide the following elements for the 100% design.

1. Drawings
2. Specifications
3. Design Report
4. Estimate

**Task 7.6 Issue for Bid Thru Conformed Set.** Lean will provide the following elements for the 100% design.

1. Drawings
2. Specifications
3. Design Report
4. Estimate
5. Attend pre-bid meeting
6. Response to questions from bidders
7. Prepare and issue addendums
8. Prepare and issue Conformed Set

**Task 7.7 Meetings for Engineering Design.** Subconsultant anticipates the following meetings:

1. Project Kickoff and weekly progress meetings (Assume 38 weeks at 1.5 hrs each)
2. Participate in 30%, 60%, 90% review meetings
3. Review meetings with Operations (8 mtgs)

**Task 7.8 Airspace Impacts and Aeronautical Data Assistance with Phased Reconstruction and FAA/SMS Coordination**

Analysis of Air Traffic and Flight Operations Impact:

Subconsultant will assist the A-E team to identify potential air traffic and flight operations impacts associated with the phased reconstruction of Taxiways A, D and E. The purpose of this analysis is to examine how specific aircraft operations, IFR effectiveness and overall arrival/departure capacity may be affected by the phased construction design over the durations specified by the team. This analysis may also reveal certain hazards that may need to be addressed during subsequent SMS activities.

Subconsultant will use the analysis to create a ranking of phased reconstruction options that impose the lowest overall impacts including information on anticipated number of flights, destinations, type of operation and hazards. Subconsultant will then support A-E in presenting the options, impacts and ranking to the airport, air carriers and FAA stakeholders.

Instrument procedure impacts will be analyzed by Subconsultant using GPD and TARGETS with instrument approach and departure procedure information collected from FAA and rebuild within Subconsultant's in-house systems.

Taxi time estimation will be performed using Subconsultant in-house GIS tools.

Aircraft performance impacts will be analyzed by LEAN using in-house aircraft performance calculators (SCAP, Foreflight and Pacelab Mission Suite) combined with current and future obstacle data available from JWA, ADIP/OAS and the OE/AAA portal.

All flight operations impact analysis will be performed for each month, over the 15-month calendar year, with a detailed breakdown of potential impacts by hour.

All results will be presented via powerpoint/excel.

During the analysis of the phased Taxiways A, D, and E reconstruction designs, LEAN will identify and create phased aeronautical data depictions intended for distribution to air carriers, 3rd party aeronautical data providers and FAA stakeholders. This will include temporary airfield depictions, operational notes, GIS, and ARINC-816/moving map display changes and supporting NOTAMS that may need to be issued by the airport.

Subconsultant will identify each rehabilitation project phase by its project/calendar duration, the 3rd party aeronautical data cycle(s) that the phase may fall into and the formal AIRAC cycle(s). This will allow the project team to have the most accurate information for inclusion in the CSPP and phasing outreach.

Subconsultant will work with A-E to refine and repurpose existing civil and electrical drawings into graphical exhibits, powerpoint/PDF, and GIS capable information packages.

Coordination Meetings:

1. Phasing meeting review for airspace with Operations. Assume five (5) mtgs at 2-hours each.
2. FAA, air carriers, and Stakeholder engagement meetings. Assume ten (10) mtgs at 2-hours each)
3. Subconsultant will participate in the pre-SRA and SRM panel meetings as a Subject Matter Expert (SME) for aeronautical data, instrument procedure and airspace changes.

**Task 7.9 Construction Administration (Assume 15 months Construction).** Subconsultant will provide construction support for the electrical design, which will include the following:

1. Review and response to shop drawings for Contractor's Work
2. Review and responses to RFI
3. Construction Meetings (Assume 64 Meetings @ 2 hr each, as required)
4. Prepare and issue Field Directives
5. Airline Outreach During Construction
6. Jeppesen, Lido, Charting, and FAA Coordination During Construction
7. Prepare and issue As-built Drawings

## **TASK 8 – AIRFIELD MODELING**

**Task 8.1 Data collection, review, and analysis.** This task consists of Subconsultant to perform data gathering, assumptions and demand documentation, an essential part of simulation modeling and analyses. The Methods, Assumptions, and Performance Specifications (MAPS) document will be reviewed with SNA staff to ensure consensus. Subconsultant will review the provided airfield layouts with the relocated taxiway and any available design day flight schedules.

1. Meet with stakeholders to discuss overall project approach, concerns and evaluation criteria.
2. Collect data on-site from air traffic control tower (or other local observational location) on runway interoperation times, runway occupancies and landing roll times/lengths, taxi speeds, and taxiflows.
3. Obtain and review available information, including such items as the current master plan, airfield layout CAD diagrams, drawings, aircraft parking, current year average day peak month (ADPM) flight schedule with matched arrivals-departures, and any available demand forecasts.
4. Analyze collected data to determine values and statistical distributions that represent actual operations at SNA.
5. Summarize all data, demand, drawings, performance metrics, and other information in the Methods, Assumptions, and Performance Specifications (MAPS) document. Document will be provided to SNA for review. After review, Subconsultant will update the MAPS document to reflect model parameter consensus.
6. A summary report will also be provided that summaries the results from the modeling including findings and recommendations.

7. A presentation will be conducted and draft copies of the deliverables will be submitted to the County for review.
8. After County review comments are addressed, the final deliverables will be provided.

Deliverables: MAPS document and summary report

**Task 8.2 Develop Traffic Demand Schedules.** This task consists of developing the daily demand file representing an average-day peak month for two traffic demand levels, including a base year (for calibration) and one future level expected to be 2024 (when the reconstruction will occur).

1. Determine peaking characteristics for forecast traffic growth. We assume the forecast includes fleet mix, as well as flight operations counts for both ADPM and peak hour.
2. Format base year ADPM schedule into the model input required for SIMMOD.
3. Develop the 24-hour daily SIMMOD input schedules. This will be documented in the MAPS (see Task 8.1).

**Task 8.3 Develop and Calibrate SIMMOD Model.** A simulation model will be developed which represents the SNA airfield in south flow in good-weather conditions and also Santa Ana wind conditions with northerly arrivals and departures.

1. Using the approved assumptions from Task 8.1, develop the base SIMMOD model of the existing airfield, consisting of runway, taxiways, and ramp parking positions.
2. The base airspace model will be of the existing final approach paths and initial departure headings and training/touch-and-go patterns.
3. Use the information obtained from Task 8.1 to add detail to the model to reflect local operations and south-flow procedures.
4. The simulation model will be calibrated to the conditions observed during the data collection task. Run at least ten iterations of the baseline model. Analyze simulation output such as delays, taxi times, and hourly operations counts. Compare simulation output with collected data to calibrate the model. Review animation to ensure accurate traffic flows.
5. Run simulation model in south flow to obtain baseline flight statistics for the two operating scenarios.

**Task 8.4 Analyze airfield with proposed Taxiway A.** Modify the calibrated model to include the relocated Taxiway A. The simulation model will be run for at least 10 iterations, or representative days, for south flow. Statistical output will be analyzed and summarized.

**Task 8.5 Analyze up to six construction phases.** For budgeting purposes, based on the size and complexity of the project, Subconsultant will analyze up to six (6) major construction phases. Details will include taxiway closures and routings to/from the runway for arrivals and departures. The simulation model will be run for at least Ten (10) iterations, or representative days, for north and south flow. Statistical output will be analyzed and summarized.

**Task 8.6 Prepare findings memo.** The study findings and recommendations regarding the proposed taxiway relocation and construction phases will be documented in a report and presented to the design team.

Deliverable: Draft findings memo

**Task 8.7 Present findings.** The study findings and recommendations from the findings memo will be presented on-site to SNA staff. Following the presentation, Subconsultant will update and finalize the findings memo.

Deliverable: Final findings memo

### **TASK 9 – COST ESTIMATING AND SCHEDULING SERVICES DURING DESIGN –**

**Task 9.1 Cost Estimating During Design.** Subconsultant will review the CMAR's cost estimate for the following design levels: 30%, 60%, and 90% Design. This also includes participation in reconciliation meetings with the CMAR at each design phase, which is assumed to be 16 hours for each of the 3 project milestones.

**Task 9.2 Scheduling Support During Design.** Subconsultant will review and validate the CMAR construction baseline schedule and provide 4 reviews and updates during the design phase.

### **TASK 10 – TOPOGRAPHIC SURVEY**

**Task 10.1 Topographic Survey.** OCPW Survey will perform Conventional ground survey methods that will be utilized to collect sufficient topographic data within the project limits on a 25' grid defined above to develop a digital terrain model and support the design of the proposed taxiway. The topographic data may include curb and gutter, flowlines, concrete and pavement, centerline and edge of existing runway and taxiway, edge of apron, striping (runway, taxiway, apron, vehicle service road, aircraft parking), building corners, driveways, surface visible utility features (meters, cabinets, pull boxes, manholes, catch basins, etc.), drainage and sewer inverts, runway/ taxiway centerline and edge lighting, airfield signage, and other surface visible features within the limits. The topographic survey data will be downloaded, processed, and tied to the horizontal and vertical control established for this project. A digital terrain model will be created from the topographic survey data. The final deliverables will include the topographic data mapped in AutoCAD Civil3D at a scale and contour interval to meet the needs of the design engineer. A hard copy will be signed and sealed by a California Professional Land Surveyor.

Prepare field notes for storm appurtenances which can readily and safely be opened using common hand tools, including storm drain manholes, catch basins, and sanitary sewer manholes. A sketch showing the type of utility, unique identification code, rim and invert elevations, pipe sizes and directions, and other pertinent information will be prepared for each of these types of safely accessible utilities.

Deliverables: Topographic Survey in CAD

**Task 10.2 Horizontal and Vertical Control Surveys.** OCPW Survey will provide horizontal and vertical project control to support the entirety of the project, including but not limited to, topographic surveys, utility surveys and construction layout. The survey control will be tied horizontally and vertically North American Datum of 1983 (NAD83), California Coordinate System, Zone 6 Epoch 2017.50 coordinates and North American Vertical Datum of 1988 (NAVD88).

Assumptions:

Surveyor will provide horizontal and vertical datums such that construction survey can tie into previously established survey control.

Deliverables:

Survey Control Drawing signed and stamped by a Licensed Land Surveyor. This may include a GIS Webmap displaying the location of the control along with monument descriptions, northing, easting, and elevations.

**TASK 11 – GEOTECHNICAL INVESTIGATION**

**Task 11.1 Data Review and Underground Service Alert (USA) Notification.** Subconsultant will attend project kick-off meeting. Review previously collected geotechnical data and project and underground utility information provided. Coordinate aircraft operations area (AOA) access for Task 1 and Task 2 services with SNA Operations. Mark boring locations in the field and contact USA.

**Task 11.2 Geophysical Survey.** Perform a geophysical survey to help check Task 11.3 locations for underground utilities. Subconsultant will obtain all necessary permits and can provide a copy to the County.

**Task 11.3 Subsurface Exploration.** Drill 14 borings along the proposed taxiway alignment and 20 borings for the proposed apron improvements, each approximately 10 feet deep. Perform dual-mass dynamic cone penetration (DCP) tests in 10 to 12 of the borings. Backfill borings with approved materials including bentonite, grout, or other approved materials. Patch paved surfaces.

Core the existing pavement at approximately 12 locations along and/or adjacent to other existing taxiways that will be affected by the proposed improvement. At each coring location, use a hand auger to evaluate the thickness of the underlying base material to a maximum depth of 12 inches below the bottom of the pavement. Backfill the hand augers with pea gravel. Patch paved surfaces with rapid set concrete dyed black.

1. Paved surfaces will be patched with rapid-set concrete.
2. Coring and subsurface exploration will be performed at night.
3. Hazardous materials will not be encountered during the subsurface evaluation.

Perform six (6) hollow-stem auger borings in existing infield areas, each approximately five (5) feet deep. Convert the borings to percolation tests wells and perform percolation tests. Upon completion of percolation testing, remove wells and backfill borings.

**Task 11.4 Investigation Derived Waste (IDW) Characterization.** Temporarily store the IDW generated during borings on-site during laboratory characterization. Dispose of the IDW.

**Task 11.5 Laboratory Testing.** Perform 102 moisture content/dry density, 40 index test (particle size analysis - #200 sieve, or Atterberg limits), 4 expansion index, 8 compaction, 8 CBR, 6 soil-lime proportion, and 8 corrosion (e.g., soluble sulfate, soluble chloride, pH, and resistivity) tests.

**Task 11.6 Environmental Laboratory Testing.** Collect one subsample from each of the borings within the portion of the soil profile that will most likely be disturbed during construction (i.e., upper 5 feet of subgrade soils). Perform laboratory testing to screen the subsamples (34 total) for Title 22 metals, TPH, and VOCs. Incorporate results into the report.

**Task 11.7 Analysis and Reporting.** Provide a draft report with conclusions and recommendations regarding earthwork/grading, aircraft pavement subgrade supporting capacity design parameters, preliminary chemical (i.e., lime and/or cement) and mechanical subgrade stabilization, and corrosion potential. Finalize report based on comments generated during review by County of Orange.

**Task 11.8 Meetings and Consultation.** Attend project team meetings and provide consultation.

**TASK 12 – NON-DESTRUCTIVE PAVEMENT TESTING – ARA**

**Task 12.1 Non-destructive Pavement Testing.** ARA will provide non-destructive pavement testing using a Heavy Weight Deflectometer (HWD) system, and pavement layer thicknesses will be estimated using a Ground Penetrating Radar (GPR) system. The following number of test points is assumed:

Feature	Length (ft)	Width (ft)	Surface	Offset (ft)	Test Spacing (ft)	Test Lines	# of Tests Points	GPR Length (mi)
Taxiway A	2,700	50	AC	10	50	2	108	1.02
Taxiway H	860	50	AC	10	50	2	35	0.33
Taxiway D	280	50	AC	10	25	2	23	0.11
Taxiway E	450	50	AC	10	25	2	36	0.17
<b>Total HWD Test Points and GPR Length</b>							<b>202</b>	<b>1.63</b>

At each test location, the HWD will apply three load drops (load levels to be determined after a review of the design aircraft mix, gear configuration and loads). In addition to the load-deflection data, the HWD records surface temperature, station, and GPS coordinates. The HWD testing locations will be staggered across test lines to maximize coverage.

Back calculation of the pavement layer moduli will be performed using ELMOD (Evaluation of Layer Moduli and Overlay Design) software that can provide back calculated layer moduli and structural overlay requirements required over the design/analysis period. The layer moduli provide an indication of material condition in the pavement structure.

For every HWD test point collected along an airport feature, ARA will calculate the layer moduli using ELMOD. The average layer moduli will be used as an input into FAARFIELD to determine the remaining life and the overlay requirements for the provided traffic mix over the analysis period. In addition, the ACR/PCR analysis using FAARFIELD will be performed in accordance with the FAA circular(s). ARA's analysis results will be included in the final report.

ARA will also perform a limited survey of the pavement surface through digital photographs that are automatically collected at a pre-set interval (typically 25-ft). The photos will show the condition of the pavement during HWD testing. If the HWD testing is performed at night, then we will collect the pavement images during the day if possible.

Thickness information will be collected continuously with the GPR. The GPR works by emitting a series of radar waves to the pavement structure while the vehicle is traveling at traffic speed and collects the dielectric constants of the underlying structure. The GPR data will be analyzed using RADAN 7 software package to estimate the dielectric properties of the pavement and determine the layer thicknesses. The resulting correlated dielectric constants are then filtered to determine pavement thicknesses and types. The results must be calibrated through pavement cores at selected locations.

**Task 12.2 Pavement Structural Evaluation.** ARA will provide pavement structural evaluation which will include the following activities:

1. Perform nondestructive deflection testing on the airport features using ARA's HWD.
2. Determine existing pavement layer thicknesses using ARA's GPR, optional.
3. Recommend location for pavement coring for GPR calibration, optional.
4. Determine back-calculated layer moduli.
5. Determine the bearing capacity and remaining life using the FAA FAARFIELD software.
6. Determine the Aircraft Classification Rating/Pavement Classification Rating (ACR/PCR) using the FAA FAARFIELD software.
7. Provide a report that details the analyses results.

**TASK 13 – SRM FACILITATION**

**Task 13.1 Project Management, logistics, and planning.** This task involves the overall management, project planning, and preparation for meetings for tasks to provide compliance with the scope of services, schedule, and coordination of the project with the County.

**Task 13.2 Project background, alternatives, and prior documentation review.** Meet via virtual conference call with the County and internal stakeholders:

1. Discuss the overall project
2. Review project design and phasing documents including drawings, designs, and stakeholders (operators) for Safety Risk Management Panel (SRMP) participation Confirm established risk matrix and definitions for severity and likelihood
3. Identify required documentation and/or information needed in advance of the SRMP
4. Identify appropriate members for SRMP of Subject Matter Experts (SME), and SRMP panel members.

**Task 13.3 Prepare for and facilitate preliminary safety risk assessment (Pre-SRA).** Subconsultant will assist A-E in the preparation of a pre-SRA for project sponsor approval for graphics, drawings, or photos necessary to illustrate the project or proposed system change to be analyzed.

1. Prepare and send Airport Team, Air Traffic, and other key stakeholder invite; the Pre-SRA is intended to identify possible hazards and scenarios for SRMP exhibit and research purposes. Attendees for the Pre-SRA will ensure SRMP will have required documentation for risk-based decision making
2. Prepare draft and final exhibits
3. Prepare draft and final presentation
4. Identify hazards and existing or planned controls and create draft hazard list for review
5. Facilitate Pre-SRA session (anticipate 4 hours) with airport and A-E team to review information (for accuracy)
6. Capture action items (as needed)
7. Update hazard worksheet (as needed)
8. Refine or revise exhibits for SRMP (as needed)

**Task 13.4 Prepare for and facilitate Safety Risk Management Panel (SRMP).** The SRMP will be conducted in accord with accepted SMS established processes and procedures:

1. Draft invitation and SRMP packet for invitation
2. Prepare SRMP stakeholder invite for approval, send invitation, and track RSVP status
3. Complete draft and final exhibits and presentation using Pre-SRA documentation
4. Complete a draft hazard and control worksheet using Pre-SRA documentation
5. Set up and facilitate SRMP dry run with A-E anticipate 1 hour
6. Prepare SRMP day of meeting files, location, handouts, etc.
7. Facilitate SRMP session (anticipate 4 to 6 hours depending on Pre-SRA findings)
8. Capture action items
9. Close out SRMP meeting and confirm next steps including SRMP Report schedule

**Task 13.5 Complete SRM Panel Report including FAA Signatures.** Upon completion of the SRMP, Subconsultant will develop a draft report detailing the SRMP results. The report will be provided to the design team and SRM panel members for review and approval prior to finalizing.

- Subconsultant will take any comments from the project sponsor and SRMP members and incorporate those into the final SRMP report and acquire final signatures.
1. Compile meeting notes



2. Author Draft SRMP Report and update associated documents (hazard worksheet, exhibits, etc.)
3. Submit to A-E /Airport for initial review
4. Complete edits and submit to SRMP participants for review
5. Integrate comments, review with A-E /Airport and complete Final SRMP Report

#### **TASK 14 – BID PHASE**

**Task 14.1 Attend Pre-Bid Conference.** A-E will attend the pre-bid conference to assist the County in responding to bidder's questions.

**Task 14.2 Issue Clarifications / Addenda.** A-E will provide written responses to bidder's questions as requested by the County and prepare any required addenda showing revision of the scope of work.

**Task 14.3 Bids Review and Recommend Award / Prepare Conformed Drawings and Specifications.** It is assumed that CMAR will review the bids submitted, provide bid tabulation, provide comments and recommendation of award to the County. A-E will assist the County in the review of the recommendations.

A-E will also prepare a conformed set of drawings and specifications, and incorporate any addendums issued during bidding.

#### **TASK 15 – CONSTRUCTION PHASE**

**Task 15.1 Attend Pre-Construction and Kick-off Meetings.** A-E will participate in person for the Pre-Construction Conference and the Construction Kick-off Meeting. Assume total of two (2) meetings. Agenda provided by Others. A-E will take meeting notes and provide to the County.

**Task 15.2 Attend Weekly Construction Meetings.** A-E will participate in person for weekly progress construction meetings with the CMAR and Contractor. Assume 2.5 hours per meeting for 64 meetings (15 months). A-E will take meeting notes and provide to the County.

**Task 15.3 Construction Observation Site Visits.** Perform periodic site visits to monitor the construction progress and observe for general conformance with the contract documents. After each site visit, A-E will prepare and submit a field report documenting any substandard work, deficiencies, corrective actions, and contractual measures to resolve any issues.

Upon completion of construction, A-E will also participate a final site visit and provide the CM team with a punch list of items to be corrected prior to final acceptance of the project.

Assume twenty-five (25) site observations trips and one (1) final inspection trip (Total of 26 trips) with further trips as needed and upon mutual agreement.

**Task 15.4 Responses to Submittals and RFI's.** For budgeting purposes, based on the size and complexity of the project, A-E has assumed responses to forty (40) submittals and fifty (50) RFI's, but A-E will respond to all valid and reasonable submittals and RFI's. In addition, A-E reserves the right to request for additional budget if submittals and RFI's are items not related to the current Scope of Services for the project.

**Task 15.5 Preparation and Issuance of Bulletins.** A-E will provide interpretation and clarification of contract drawings, revise drawings and issue bulletin drawings when required. Assume issuance of three (3) bulletins.

**Task 15.6 Review Change Orders.** A-E will review change order requests (COR) and confirm that the scope is accurate, that the work is required as part of the project, and that the scope was not included in the Construction Documents before the award of contract was issued to the Contractor.

A-E will also review the quantities of materials, cost of materials and wage rates for accuracy and general acceptability. For budgeting purposes, based on the size and complexity of the project, A-E has assumed review of eight (8) change order requests, but reserves the right to request for additional budget if change order requests are for items not related to the current Scope of Services for the project.

**Task 15.7 Prepare Record Drawings.** A-E will prepare Record Drawings based on the Contractor's as-built mark-ups. A-E will perform a review of the as-built mark-ups, but it is assumed the CMAR will review the as-built mark-ups for accuracy prior to submitting to A-E. Prior to preparing the Record Drawings, A-E will also review change orders, RFI responses, and submittal to completeness of the as-built mark-ups. The Record Drawings will be prepared using the design drawings as the base and incorporating changes that were performed during construction.

Assume: The CMAR will perform a review for the completeness and accuracy of the as-built mark-ups prior to submitting to A-E.

Deliverables will include one (1) set of full-sized PDF Record Drawings and electronic AutoCAD files to the County.

**Task 15.8 Update of the Airport Layout Plan.** A-E will update the Airport Layout Plan based on the Record Drawings and resubmit to FAA for approval.

Deliverables will include a PDF of the updated ALP.

## **TASK 16 – COST ESTIMATING AND SCHEDULING SERVICES DURING CONSTRUCTION**

**Task 16.1 Cost Estimating During Construction.** Subconsultant will provide reviews of the CMAR's construction change orders including participation in reconciliation meetings with the CMAR.

For budgeting purposes, based on the size and complexity of the project, A-E has assumed 290 hours over 15 months of construction.

**Task 16.2 Scheduling Support During Construction.** Subconsultant will review the CMAR's CPM Baseline Schedule, prepare report and make recommendations for the Construction Schedule During Construction Phase (15 Months).

For budgeting purposes, based on the size and complexity of the project, A-E has assumed 285 hours over 15 months of construction.

## **TASK 17 – REMEDIATION OF SOILS**

**Task 17.1 Remediation of Soils.** A-E will provide as-needed soils investigation, testing, and design of soils remediation if contaminated material is encountered or suspected by the County. This Allowance task will be performed on a Time and Material basis, and A-E will be required to obtain specific County authorization before proceeding with any work.

A. Design Schedule:

1. Issuance of NTP date (The anticipated NTP date to be determined)
2. Submit 30% schematic design– 9 weeks after NTP

3. Submit 60% design development – 18 weeks after NTP
  4. Submit 90% design development – 26 weeks after NTP
  5. Submit 100% / Final construction documents submittal – 30 weeks after NTP
  6. Bid Document submittal – 32 weeks after NTP
- B. Assumptions / Exclusions
1. The County will provide A-E with a utility base map of the airport which shows the existing locations of known underground utilities.
  2. It is assumed that the CMAR will be responsible for all subsurface utility locating and perform potholing of underground utilities.
  3. The County can provide surveying services to locate all utilities that are exposed or installed with reasonable notification.
  4. OCPW Survey will provide the topographic survey and survey control for the project.
  5. With assistance from the County, A-E will develop the aircraft fleet mix and traffic volumes for the pavement design including any new aircraft types or services anticipated at the airport.
  6. Assume Construction Manager At Risk (CMAR) will provide cost estimating and construction scheduling to A-E based on the construction phasing plans.
  7. County will prepare the Special Conditions and General Conditions of the specifications. A-E will review for compliance with the technical specifications.
  8. Environmental engineering and mitigation is not included.
  9. Permitting is not included. A-E 's deliverables will be reviewed by the County's 3<sup>rd</sup> party consultant.
  10. Assume site has no contaminated soils.
  11. Removal or remediation of contaminated soils is not included.
  12. A-E will prepare a conceptual SWPPP. It is assumed the Contractor will finalize the SWPPP and obtain the NOI and any necessary permits.
  13. Excludes improvements for westside vehicle service road.
  14. Assumed design duration is eight (8) months. Assume construction duration is 15 months. Post construction services duration is two (2) months.
  15. Pre-SRA and SRMP sessions to be conducted onsite
  16. If hybrid meetings are proposed (both onsite and virtual participants), costs may be adjusted to reflect the change. If one or more virtual meetings (Pre-SRA or SRMP) are proposed, costs may also need to be adjusted to reflect the change.
  17. County to participate in planning and practice sessions for the SRMP.
  18. A-E to provide technical and action notes during the Pre-SRA and SRMP sessions
  19. County to provide SAS signatures in a timely manner for FAA SRMP compliance and schedule management.
  20. Assumed Final Construction Report will be provided by the County's Construction Management Team (CM).
  21. During the construction period, assume the County's CM will facilitate weekly construction meetings.
  22. Material testing and QA surveys will be provided by Others
  23. Excludes publish outreach or public affairs. A-E will assist in preparing exhibit for County staff for these meetings
  24. No other services are assumed beyond what is defined in this Scope of Work.
  25. Consultant shall have no responsibility for (i) construction means, methods, techniques, or sequences; (ii) for the direction of Contractors' personnel; (iii) selection of construction equipment; (iv) coordination of Contractors' work; (v) for placing into operation any plant or equipment; or (vi) for Contractors' failure to perform the work in accordance with any applicable construction contract.
  26. Consultant shall not be responsible for Owner's pre-existing site conditions or the aggravation of those preexisting site conditions to the extent not caused by the negligence

or willful misconduct of Consultant. Consultant shall not be responsible for inspecting, observing, reporting or correcting health or safety conditions or deficiencies of Owner, Contractors or others at the project site ("Project Site") other than Consultant's employees, subconsultants and vendors. So as not to discourage Consultant from voluntarily addressing health or safety issues while at the Project Site, in the event Consultant does identify such issues by making observations, reports, suggestions or otherwise, Consultant shall have no authority to direct the actions of others not under Consultant's responsibility and control and shall have no liability, responsibility, or affirmative duty arising on account of Consultant's actions or forbearance.

27. Notwithstanding anything contained in this Agreement, Consultant shall have no responsibility for the discovery, presence, handling, removal, transportation, storage or disposal of, or exposure of persons to hazardous materials in any form related to the Project.
28. Consultant shall perform the Scope of Services in accordance with the degree of professional skill, quality and care ordinarily exercised by members of the same profession currently practicing in the same locality under comparable circumstances and as expeditiously as is consistent with professional skill and the orderly progress of the Project.

**ATTACHMENT B: COST/COMPENSATION**

- I. COMPENSATION:** This is a **time and materials** Contract between County and A-E for ***JWA Taxiways A, D, and E Reconstruction*** as set forth in Attachment A, "Scope of Work."

A-E agrees to accept the specified compensation as set forth in this Contract as full remuneration for performing all services and furnishing all staffing, labor, vehicles, equipment, tools, materials, overhead, travel, etc. required, for any reasonably unforeseen difficulties which may arise or be encountered in the execution of the services until acceptance, for risks connected with the services, and for performance by A-E of all its duties and obligations hereunder. A-E shall only be compensated as set forth herein below for work performed in accordance with the Scope of Work. **County shall have no obligation to pay any sum in excess of the amount specified in Article 1.4 of the Contract unless authorized by amendment in accordance with Paragraphs 6.3 and 6.19 of the County Contract Terms and Conditions.**

- II. PRICING:** Payment shall be made in accordance with the provisions of this Contract. Partial progress payments may be allowed at the discretion of the County Project Manager. Payment shall be as follows:

**1. Classification Rates:**

<b>AECOM TECHNICAL SERVICES, INC.</b>	
<b>Classification Titles</b>	<b>Hourly Rate</b>
Principal in Charge	\$330.00
QA/QC Manager	\$267.00
Sr. Project Manager	\$283.00
Sr. Technical Lead	\$247.00
Civil Engineer III	\$215.00
Civil Engineer II	\$184.00
Civil Engineer I	\$152.00
Jr. Engineer II	\$128.00
Jr. Engineer	\$103.00
Sr. Designer / CAD Designer	\$120.00
Project Planner III	\$215.00
Project Controls	\$120.00
Project Administrator	\$103.00

<b>*Lean Technology Corporation</b> <i>Electrical Engineering</i>	
<b>Classification Titles</b>	<b>Hourly Rate</b>
Project Manager/Principal	\$330.75
Chief Aerospace Engineer	\$330.75
Sr. Power Engineer	\$228.78
Sr. Aeronautical/Electrical Engineer	\$201.12
Sr. Electrical Engineer	\$201.12
Engineer III	\$154.94
Engineer II	\$125.70
Engineer I	\$105.62

<b>*Transolutions, LLC</b> <i>Airfield Modeling</i>	
<b><u>Classification Titles</u></b>	<b><u>Hourly Rate</u></b>
Managing Principal	\$309.49
Director	\$245.07
Managing Associate	\$202.49
Senior Associate	\$175.05
Associate	\$145.28
Analyst	\$105.01

<b>*Lenax Construction Services Inc.</b> <i>Cost Estimating and Scheduling Services</i>	
<b><u>Classification Titles</u></b>	<b><u>Hourly Rate</u></b>
Sr. Lead Estimator	\$ 250.16
Sr. MEP Estimator	\$ 220.00
Sr. Estimator	\$ 190.00
General Estimator	\$ 160.00
Sr. Scheduler	\$ 225.00
Scheduler	\$ 175.00

<b>*Diaz Consultants, Inc.</b> <i>Geotechnical Investigation</i>	
<b><u>Classification Titles</u></b>	<b><u>Hourly Rate</u></b>
Principal	\$ 323.00
Associate II	\$ 254.00
Associate I	\$ 240.00
Senior	\$ 218.00
Project II	\$ 176.00
Project I	\$ 144.00
Staff II	\$ 125.00
Staff I	\$ 120.00
Prevailing Wage II	\$ 215.00
Prevailing Wage I	\$ 187.00
CADD	\$ 100.00
Word Processor	\$ 129.00
Technical Editor	\$ 147.00

<b>*Applied Research Associates, Inc.</b> <i>Non-Destructive Pavement Testing</i>	
<b><u>Classification Titles</u></b>	<b><u>Hourly Rate</u></b>
Principal Subject Matter Expert	\$ 326.00
Principal Program Director	\$ 272.00
Principal Technical Professional 2	\$ 249.00
Principal Technical Professional 1	\$ 205.00
Senior Technical Professional 2	\$ 178.00
Senior Technical Professional 1	\$ 155.00
Staff Technical Professional 2	\$ 130.00
Staff Technical Professional 1	\$ 105.00
Junior Technical Professional	\$ 92.00

Lead Technician	\$ 127.00
Senior Technician	\$ 94.00
Staff Technician	\$ 67.00
Junior Technician/Aide	\$ 59.00
Senior Operations Manager	\$ 234.00
Operations Manager	\$ 158.00
Principal Professional Support	\$ 141.00
Senior Professional Support	\$ 118.00
Staff Professional Support	\$ 97.00
Junior Professional Support	\$ 86.00
Administrative Support 2	\$ 70.00
Administrative Support 1	\$ 65.00

<b>*Landry Consulting, LLC</b> <i>SRM Facilitation</i>	
<b><u>Classification Titles</u></b>	<b><u>Hourly Rate</u></b>
Project Manager/SA Facilitator	\$211.56

Note: County will not pay A-E more than the listed amount for Sub-Contractor work, regardless of any agreement between the A-E and their Sub-Contractor. Sub-Contractor rates are listed for convenience only.

Note: Construction-related work performed under A-E service contracts may meet the definition of “public work” under Labor Code § 1720 et seq. “Construction” includes work performed during the design and preconstruction phases of construction, including, but not limited to, inspection and land surveying work, and work performed during the postconstruction phases of construction, including, but not limited to, all cleanup work at the jobsite. See Labor Code § 1720. Contracts for A-E services shall mandate that prevailing wages be paid where mandated by law.

- III. PRICE INCREASES/DECREASES:** No billing rate increases will be permitted during the first 36 months of this Contract. All price decreases will automatically be extended to County.
- IV. FIRM DISCOUNT AND PRICING STRUCTURE:** A-E guarantees that prices quoted are equal to or less than prices quoted to any other local, State or Federal government entity for services of equal or lesser scope. A-E agrees that no price increases shall be passed along to County during the term of this Contract not otherwise specified and provided for within this Contract.
- V. A-E’S EXPENSE:** A-E will be responsible for all costs related to photo copying, telephone communications and fax communications while on County sites during the performance of work and services under this Contract.
- VI. REIMBURSABLE ITEMS:** Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the County Project Manager. A-E may be entitled to reimbursement for the following, upon prior approval by County:
- 1) The actual costs of special equipment to be rented, leased or purchased by A-E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase and costs have been approved in writing by the County Project Manager.
  - 2) Printing expenses paid to outside contractors; to the extent such contractors and reproduction rates have been approved by the County Project Manager.

- 3) Other actual costs and/or payments specifically approved and authorized in writing by the County Project Manager and actually incurred by A-E in performance of this Contract.
- 4) Travel costs shall only be reimbursed if approved in advance in writing by County Project Manager and are subject to the following restrictions:
  - a. Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this Contract shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A-E's "Home Based" office location and County location, as well as mileage within County property will not be reimbursed.
- 5) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
- 6) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.
- 7) All reimbursable expenses must be itemized on A-E invoice(s) and documented with receipts. Receipts for reimbursable expenses must be submitted with all A-E invoices. Invoices for reimbursable expenses without back-up receipts will not be paid. A-E is responsible for submitting reimbursable invoices in a format that is acceptable to the County. Reimbursable items shall be charged at cost. Any third-party or subcontractor services shall also be charged at cost; no mark-ups will be allowed.

**VII. PAYMENT TERMS:** Invoices are to be submitted in monthly arrears, after services have been completed, to the address specified below. Payment will be net thirty (30) days after receipt of an invoice in a format acceptable to the County, as applicable. Invoices shall be verified and approved by County and subject to routine processing requirements. The responsibility for providing an acceptable invoice to County for payment rests with A-E. Incomplete or incorrect invoices are not acceptable and will be returned to the A-E for correction.

Billing shall cover services and/or goods not previously invoiced. The A-E shall reimburse the County for any monies paid to the A-E for goods or services not provided or when goods or services do not meet the Contract requirements.

Payments made by County shall not preclude the right of County from thereafter disputing any items or services involved or billed under this Contract and shall not be construed as acceptance of any part of the goods or services.

**VIII. INVOICING INSTRUCTIONS:** The A-E will provide an invoice on the A-E's letterhead. Each invoice will have a unique number and will include the following information:

- A. A-E's name and address
- B. A-E's remittance address, if different from (A), above
- C. Name of County agency/department
- D. Delivery/service address
- E. Contract number
- F. Service Period (month, etc.)
- G. Description of Services
- H. Names of staff who performed services and dates services were provide and number of hours
- I. Total
- J. Taxpayer ID number



Invoices and support documentation are to be forwarded to:

**County of Orange, Public Works  
ATTN: Accounts Payable  
601 N. Ross Street  
Santa Ana, CA 92701  
Project Manager: John Pape**

A-E has the option of receiving payment directly to their bank account via an Electronic Fund Transfer (EFT) process in lieu of a check payment. Payment made via EFT will also receive Electronic Remittance Advice with the payment details via email. An email address will need to be provided to the County via an EFT Authorization Form. To request a form, please contact the DPA.

## ATTACHMENT C: STAFFING PLAN

(Complete and submit as #2. A.1., in Part 3 of Section II “Response Requirements”)

1. A-E KEY PERSONNEL

Name	Classification/ Designation	Years of Experience	Years with Current Firm	Licenses/ Certifications (include license number)
Duke Young	Project Manager	21	21	PE (Civil), CA #69209, HI #17779 AECOM Certified Project Manager
Matt Ulukaya	Project Principal	37	32	Professional Civil Engineer, CA #45347
John Behzadi	Airfield Civil Engineering	40	25	Professional Civil Engineer, CA #37687
Doron Lean	Airfield Electrical Engineer (Lean Technology Corporation)	25	25	Professional Electrical Engineer, CA #19808
Hao Tu	Airfield Geometry	9	4	Professional Civil Engineer, CA #89069
Paul Hannah	Airspace & Flight Operations	22	8	
Joanne Landry	SRM Panel Facilitator	14	14	Project Management Professional #1321400E1
Belinda Hargrove	Airfield Traffic Simulations	25	24	
Nate Smith	Alternative Delivery Specialist (CMAR)	24	12	

Geoffrey Gindhart	Planning Lead	25	15	
Jeffrey Warkoski	QA/QC Manager	35	4	Professional Civil Engineer, CA #73364

A-E understands that the personnel represented as assigned to the Contract must remain working on the Contract throughout the duration of the Contract unless otherwise requested or approved by the County. Substitution or addition of A-E's key personnel in any given category or classification shall be allowed only with prior written approval of the County's Project Manager. **Note: The written approval of substituted A-E Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works or other County department.**

A-E may reserve the right to involve other A-E personnel, as their services are required. The specific individuals will be assigned based on the need and timing of the service/classification required. Assignment of additional key personnel shall be subject to County Project Manager written approval. **Note: The written approval of additional A-E Key Personnel is for departmental use only and shall not be used for auditing purposes outside OC Public Works or other County Department.** County reserves the right to have any A-E personnel removed from providing services to County under this Contract. County is not required to provide any reason for the request for removal of any A-E personnel.

**2. SUBCONSULTANT(S) (IF APPLICABLE)**

Listed below are subconsultant(s) anticipated by A-E to perform services specified in Attachment A. Deletion, substitution, or addition of A-E's subconsultant(s) in any given project function shall be allowed only with prior written approval of the County Project Manager.

Corporate Name & Corporate Address	Local Office Address*	Contact Name & Telephone Number	Project Function (Division of Work/Trade )	Contractor License Number	DIR Registration Number	DBE If Yes, enter DBE Certification Number	Gross Receipts Category (Table 1 below)	Age of Firm (Years)	DVBE If Yes, enter DVBE Certification Number	SBA If Yes, enter DUNNS Certification Number
Applied Research Associates, Inc. 4300 San Mateo Blvd., NE, Suite A-220, Albuquerque, NM 87110-1295	165 S. Chestnut St., Ventura, CA 93001	Dr. Alvaro Ulloa, (217) 356-4500	Pavement Testing	N/A	1000041345	N/A	7	44	N/A	N/A
Diaz Consultants, Inc. 1616 E. 17th Street Santa Ana, CA 92705	1616 E. 17th Street Santa Ana, CA 92705	Clint I. Isa 714-245-2920	Geotechnical Engineering	N/A	1000009311	DBE #20160	4	29	N/A	80-880-2649
Guida Surveying, Inc. 220 Commerce, Ste 150 Irvine, CA 92602	220 Commerce, Ste 150 Irvine, CA 92602	Bernie McNally, PLS 949-777-2000	Professional Land Surveying Services	N/A	1000006862	SBE #26277	7	27	N/A	94-967-5631

Landry Consulting, LLC 3801 Edgewood Dr. Vancouver, WA 98661	N/A	Joanne M Landry 206-714-7663	SRM Panel Facilitation	N/A	N/A	OMWBE – WA: D2F0020515 CA DBE: 43237	1	15	N/A	834602125
Lean Technology Corporation 20 Executive Park, Ste 155 Irvine, CA 92614	20 Executive Park, Ste 155 Irvine, CA 92614	Doron Lean, PE 310-310-5912	Airfield Lighting & NAVAIDs	N/A	1000049361	WMBE #20001165	5	19	N/A	07-990-0172 Small Business (Ca. Dept of General Svces): 2008138
Lenax Construction Services, Inc. 3700 Wilshire Blvd. #560 Los Angeles, CA 90010	3700 Wilshire Blvd. #560 Los Angeles, CA 90010	Yelena Zeetser, President 213-637-9146	Cost Estimating and Scheduling Services	N/A	1000030730	DBE #20756	5	29	N/A	N/A
TransSolutions, LLC 14600 Trinity Blvd., Ste 200 Fort Worth, TX 76155	N/A	Belinda G. Hargrove 817-359-2958	Airport Simulations	N/A	N/A	DBE/SBE/WBE #34062	4	24	N/A	N/A

**ATTACHMENT D: AIRPORT SECURITY AND ID BADGE REQUIREMENTS**

Airport Security: Contractor, Contractor's employees and Contractor's subcontractors must complete the following in order to obtain an Airport-Issued Security Identification Badge (ID Badge).

**I. AIRPORT-ISSUED BADGE ACQUISITION, RETENTION, AND TERMINATION:**

Prior to issuance of airport security ID Badge(s), designated Contractor personnel who shall be working on-site in JWA restricted areas and engaged in the performance of work under this Contract must pass JWA's security screening requirements, which include fingerprinting to complete an F.B.I. Criminal History Records Check (CHRC) and a Security Threat Assessment (STA). Contractor should anticipate four to six weeks for new employees to receive an airport security ID badge which includes the following general steps:

1. Company designates at least two representatives as Authorized Signatories by submitting a letter on company letterhead using JWA's template.
2. Subcontractors and tenant contractors must also have two Authorized Signatories at a minimum.
3. All company employees requiring unescorted access to restricted airport areas are scheduled for fingerprint appointments.
4. Background check fees are provided at the first appointment
5. Employees must provide two government-issued IDs at the first appointment.
6. STA and/or CHRC results are received.
7. All ID Badge applicants successfully passing the STA and/or CHRC are scheduled for required training.
8. ID Badge related fees are provided, and any additional information requested is provided at the training appointment.
9. Upon successful completion of the required training, employees will receive their ID Badge.
10. Authorized Signatories are required to maintain the ID Badge process for the onboarding of future employees, employee ID Badge renewals, scheduling, and other actions detailed below.
11. Contractor's designated personnel must, at a minimum, complete the following required training based on contractors work to be provided and access areas:
  - i. Authorized Signatory Training: All organizations must designate at least two Authorized Signatories by providing a letter on company letterhead using the ID/Access Control Office template. The designated Authorized Signatories will be responsible for the entire ID Badge process for their organization including, but not limited to, the onboarding of new employees, renewing employees, scheduling employees for appointments, payment coordination, ID Badge audits, resolution to safety/security violations caused by the organization's employees, subtenants, or subcontractors. Authorized Signatories must attend this approximate 1 hour course initially and annually.
  - ii. Security Identification Display Area (SIDA) Training: All employees with an operational need to have unescorted access to JWA SIDA must complete this approximate 1.5-hour course and pass a written test.

- 
- iii. Sterile Area (Elevator) Training: All Non-SIDA employees with an operational need to have unescorted access to the Sterile Area of the terminal must complete an approximate 30- minute training session and pass a written test.
  - iv. Non-Movement Area or Movement Area Driver Training: All employees with an operational need to drive on airfield service roads and/or ramps must attend the approximate 1-hour Non-Movement Area Driver course and pass a written test. Employees with an operational need to drive on active taxiways and/or active runways must coordinate this training with JWA Operations Division.
  - v. Contractors' designated personnel must successfully complete the badge acquisition within six weeks of the Contract execution, unless other arrangements have been coordinated by County Project Manager or designee in writing.
  - vi. All personnel assigned to this contract must be in possession of a current, valid Airport-Issued ID Badge prior to fulfilling an independent shift assignment.
  - vii. Contractor is responsible for terminating and retrieving Airport-Issued ID Badges as soon as an employee no longer needs unescorted access to airport restricted areas. Terminated ID Badges must be returned to the ID/Access Control office within three business days. Failure to do so will result in a \$250.00 fee.
  - viii. Contractor shall be responsible for all cost associated with JWA-Issued ID Badge process the ID/Access Control Office maintains the current list of fees. Below is a list of estimated costs for new ID Badge applications and ID Badge renewals:
    - STA Fee: Approximately \$11.00
    - Fingerprint/CHRC Fee: Approximately \$31.00
    - ID Badge Fee: Approximately \$10.00
    - Terminated, Unreturned ID Badge Fee: Approximately \$250.00
12. Contractor shall abide by all the security requirements set forth by the Transportation Security Agency (TSA) and JWA.

**ATTACHMENT E: MONTHLY REPORT OF DBE PARTICIPATION**

*To be completed by the prime vendor and emailed to the County Project Manager.*

**MONTH OF:**  
**Submitted By:**  
**Name of Firm:**

<b>Name and Address of DBE Firm</b>	<b>Contact Person and Phone Number</b>	<b>Subcontracting Item</b>	<b>Total Commitment</b>	<b>Current Month Payments</b>	<b>Contract To-date Payments</b>



**ATTACHMENT F: LIST OF DBE FIRMS**

This contract will be funded in part by a grant from the Federal Aviation Administration, therefore the requirements of Title 49 CFR Part 26, Participation by Disadvantaged Business Enterprises in Department of Transportation Programs, apply to this contract. John Wayne Airport, Orange County has set an overall DBE participation goal for federally funded contracts as indicated above. If Bidder has listed a DBE in the bid, they are required to report DBE participants in this contract to assist the County in tracking DBE participation to be counted towards achievement of its overall goal. Please list any DBE firms that will participate as subcontractors or suppliers for this project (you may use additional pages if necessary). Please note that these firms must be certified with the California Unified Certification Program to be listed.

Name/Address/Phone of DBE Firm	Product or Division of Work	Gross Receipts Category (Table 1 below)	Age of Firm (Years)	Total \$ Value	* Applied \$ Value	% of Total Project

	<b>* Applied \$ Value</b>	<b>% of Total Project</b>
Total Subcontractors	_____	_____
Total Vendors of Materials and Supplies	_____	_____
Total Manufacturers	_____	_____
Total DBE Participation	_____	_____

- \* Applied \$ Value is:
- (a) 100% for Subcontractors
  - (b) 60% for Vendors of Materials and Supplies
  - (c) 100% for Manufacturers

Annual Gross Receipt (Most recent fiscal year)	Gross Receipts Category
Less than \$500,000	1
\$500,000 - \$1,000,000	2
\$1,000,000 - \$2,000,000	3
\$2,000,000 - \$5,000,000	4
\$5,000,000 - \$10,000,000	5
\$10,000,000 - \$15,000,000	6
Over \$15,000,000	7

## Contract Summary Form

OC Expediter Requisition #: 1521149

**AECOM Technical Services, Inc.**

### SUMMARY OF SIGNIFICANT CHANGES

1. Establish contract with AECOM Technical Services, Inc. for John Wayne Airport, Taxiways A, D and E Reconstruction.

### SUBCONTRACTORS

**This contract includes the following subcontractors or pass through to other providers.**

Subcontractors	Services	Amount
Lean Technology Corporation	Electrical Engineering	Unknown at this time.
Transolutions, LLC	Airfield Modeling	Unknown at this time.
Lenax Construction Services Inc.	Cost Estimating and Scheduling Services	Unknown at this time.
Diaz Consultants, Inc.	Geotechnical Investigation	Unknown at this time.
Applied Research Associates, Inc.	Non-destructive Pavement Testing	Unknown at this time.
Landry Consulting, LLC	SRM Facilitation	Unknown at this time.

### CONTRACT OPERATING EXPENSES

Unknown at this time – A-E contract allowable reimbursable items are approved by County Project Manager in advance and are listed below:

- I. Reimbursable Items: Reimbursable items are non-salary items that are not included in the Scope of Work but necessary for completion of the work and must be authorized in advance by the County Project Manager. A-E may be entitled to reimbursement for the following, upon prior approval by County:
  - 1) The actual costs of special equipment to be rented, leased, or purchased by A-E for use exclusively in the performance of the Scope of Services, to the extent such rental, lease, purchase, and costs have been approved in writing by the County Project Manager.
  - 2) Printing expenses paid to outside contractors; to the extent such contractors and reproduction rates have been approved by the County Project Manager.

- 3) Other actual costs and/or payments specifically approved and authorized in writing by the County Project Manager and actually incurred by A-E in performance of this Contract.
- 4) Travel costs shall only be reimbursed if approved in advance in writing by County Project Manager and are subject to the following restrictions:
  - a) Reimbursement of mileage for the business use of a personal vehicle during the conduct of business within the Scope of Services of this Contract shall be based on the Internal Revenue Service Standard Mileage Rate in effect at the time. Mileage between the A-E's "Home Based" office location and OC Public Works location, as well as mileage within OC Public Works property will not be reimbursed.
  - b) Cost of "Home Based" Xerox copies, faxes, and other supplies and materials associated with them will not be reimbursed.
  - c) Cost of cellular phones, cell phone usage plans and usage minutes, and other mobile communication devices will not be reimbursed.

All reimbursable expenses must be itemized on A-E invoice(s) and documented with receipts. Receipts for reimbursable expenses must be submitted with all A-E invoices. Invoices for reimbursable expenses without back-up receipts will not be paid. A-E is responsible for submitting reimbursable invoices in a format that is acceptable to the County. Reimbursable items shall be charged at cost. Any third-party or subcontractor services shall also be charged at cost; no mark-ups will be allowed.

**Memorandum of Recommendation and Evaluation Ranking Summary**

**RFP-080-2198302 for John Wayne Airport, Taxiways A, D and E Reconstruction**

Based on the established criteria set forth in the Request for Proposal, below are the Respondent ranks:

<b>FINAL RANKINGS</b>	
<b>Respondents</b>	<b>Rank</b>
AECOM Technical Services, Inc.	1
Kimley-Horn and Associates, Inc.	2
Atkins North America, Inc.	3

<b>RANK TABLE</b>	<b>AECOM Technical Services, Inc.</b>	<b>Atkins North America, Inc.</b>	<b>Kimley-Horn and Associates, Inc.</b>
Evaluator 1	1	2	3
Evaluator 2	1	2	3
Evaluator 3	2	3	1
Evaluator 4	1	2	3
Evaluator 5	1	3	2
<b>Rank Total</b>	<b>6</b>	<b>12</b>	<b>12</b>
<b>FINAL RANKING</b>	<b>1</b>	<b>3</b>	<b>2</b>

## Summary of Evaluator Scoring

<b>EVALUATOR 1</b>	<b>1</b>	<b>2</b>	<b>3</b>
<b>Written Evaluation</b>	<b>AECOM Technical Services, Inc.</b>	<b>Atkins North America, Inc.</b>	<b>Kimley-Horn and Associates, Inc.</b>
CRITERIA 1: Understanding of the Project (175 pts)	150	150	160
CRITERIA 2: Project Approach (150 pts)	120	140	120
CRITERIA 3: Key Personnel and References / Related Experience (100 pts)	100	90	90
CRITERIA 4: Quality Control (50 pts)	50	45	40
CRITERIA 5: Degree of Compliance with the County Model Contract (25 pts)	25	25	25
<b>WRITTEN EVALUATION SCORE TOTAL</b>	<b>445</b>	<b>450</b>	<b>435</b>
<b>Interview Evaluation</b>			
QUESTION 1 (150 pts)	145	140	135
QUESTION 2 (125 pts)	120	110	115
QUESTION 3 (125 pts)	120	110	115
QUESTION 4 (35 pts)	30	25	30
QUESTION 5 (35 pts)	30	30	30
QUESTION 6 (30 pts)	30	30	30
<b>INTERVIEW EVALUATION SCORE TOTAL</b>	<b>475</b>	<b>445</b>	<b>455</b>
<b>COMBINED WRITTEN &amp; INTERVIEW</b>	<b>920</b>	<b>895</b>	<b>890</b>
<b>FINAL RANKING</b>	<b>1</b>	<b>2</b>	<b>3</b>

<b>EVALUATOR 2</b>	<b>1</b>	<b>2</b>	<b>3</b>
<b>Written Evaluation</b>	<b>AECOM Technical Services, Inc.</b>	<b>Atkins North America, Inc.</b>	<b>Kimley-Horn and Associates, Inc.</b>
CRITERIA 1: Understanding of the Project (175 pts)	160	150	155
CRITERIA 2: Project Approach (150 pts)	125	130	120
CRITERIA 3: Key Personnel and References / Related Experience (100 pts)	85	80	75
CRITERIA 4: Quality Control (50 pts)	40	40	40
CRITERIA 5: Degree of Compliance with the County Model Contract (25 pts)	25	25	25
<b>WRITTEN EVALUATION SCORE TOTAL</b>	<b>435</b>	<b>425</b>	<b>415</b>
<b>Interview Evaluation</b>			
QUESTION 1 (150 pts)	145	135	130
QUESTION 2 (125 pts)	120	115	110
QUESTION 3 (125 pts)	120	115	110
QUESTION 4 (35 pts)	25	25	25
QUESTION 5 (35 pts)	30	30	25
QUESTION 6 (30 pts)	30	30	25
<b>INTERVIEW EVALUATION SCORE TOTAL</b>	<b>470</b>	<b>450</b>	<b>425</b>
<b>COMBINED WRITTEN &amp; INTERVIEW</b>	<b>905</b>	<b>875</b>	<b>840</b>
<b>FINAL RANKING</b>	<b>1</b>	<b>2</b>	<b>3</b>

<b>EVALUATOR 3</b>	<b>1</b>	<b>2</b>	<b>3</b>
<b>Written Evaluation</b>	<b>AECOM Technical Services, Inc.</b>	<b>Atkins North America, Inc.</b>	<b>Kimley-Horn and Associates, Inc.</b>
CRITERIA 1: Understanding of the Project (175 pts)	158	123	158
CRITERIA 2: Project Approach (150 pts)	120	115	135
CRITERIA 3: Key Personnel and References / Related Experience (100 pts)	90	70	70
CRITERIA 4: Quality Control (50 pts)	40	35	35
CRITERIA 5: Degree of Compliance with the County Model Contract (25 pts)	25	25	25
<b>WRITTEN EVALUATION SCORE TOTAL</b>	<b>433</b>	<b>368</b>	<b>423</b>
<b>Interview Evaluation</b>			
QUESTION 1 (150 pts)	143	120	135
QUESTION 2 (125 pts)	106	94	106
QUESTION 3 (125 pts)	106	106	119
QUESTION 4 (35 pts)	28	32	32
QUESTION 5 (35 pts)	32	33	33
QUESTION 6 (30 pts)	26	29	29
<b>INTERVIEW EVALUATION SCORE TOTAL</b>	<b>441</b>	<b>414</b>	<b>454</b>
<b>COMBINED WRITTEN &amp; INTERVIEW</b>	<b>874</b>	<b>782</b>	<b>877</b>
<b>FINAL RANKING</b>	<b>2</b>	<b>3</b>	<b>1</b>

<b>EVALUATOR 4</b>	<b>1</b>	<b>2</b>	<b>3</b>
<b>Written Evaluation</b>	<b>AECOM Technical Services, Inc.</b>	<b>Atkins North America, Inc.</b>	<b>Kimley-Horn and Associates, Inc.</b>
CRITERIA 1: Understanding of the Project (175 pts)	170	160	170
CRITERIA 2: Project Approach (150 pts)	130	140	110
CRITERIA 3: Key Personnel and References / Related Experience (100 pts)	90	70	70
CRITERIA 4: Quality Control (50 pts)	40	40	35
CRITERIA 5: Degree of Compliance with the County Model Contract (25 pts)	25	25	25
<b>WRITTEN EVALUATION SCORE TOTAL</b>	<b>455</b>	<b>435</b>	<b>410</b>
<b>Interview Evaluation</b>			
QUESTION 1 (150 pts)	145	140	135
QUESTION 2 (125 pts)	125	115	115
QUESTION 3 (125 pts)	110	115	115
QUESTION 4 (35 pts)	30	25	30
QUESTION 5 (35 pts)	30	30	25
QUESTION 6 (30 pts)	30	30	25
<b>INTERVIEW EVALUATION SCORE TOTAL</b>	<b>470</b>	<b>455</b>	<b>445</b>
<b>COMBINED WRITTEN &amp; INTERVIEW</b>	<b>925</b>	<b>890</b>	<b>855</b>
<b>FINAL RANKING</b>	<b>1</b>	<b>2</b>	<b>3</b>



<b>EVALUATOR 5</b>	<b>1</b>	<b>2</b>	<b>3</b>
<b>Written Evaluation</b>	<b>AECOM Technical Services, Inc.</b>	<b>Atkins North America, Inc.</b>	<b>Kimley-Horn and Associates, Inc.</b>
CRITERIA 1: Understanding of the Project (175 pts)	165	160	160
CRITERIA 2: Project Approach (150 pts)	140	130	135
CRITERIA 3: Key Personnel and References / Related Experience (100 pts)	90	90	90
CRITERIA 4: Quality Control (50 pts)	45	45	45
CRITERIA 5: Degree of Compliance with the County Model Contract (25 pts)	25	25	25
<b>WRITTEN EVALUATION SCORE TOTAL</b>	<b>465</b>	<b>450</b>	<b>455</b>
<b>Interview Evaluation</b>			
QUESTION 1 (150 pts)	135	113	128
QUESTION 2 (125 pts)	113	94	100
QUESTION 3 (125 pts)	113	100	100
QUESTION 4 (35 pts)	32	28	28
QUESTION 5 (35 pts)	32	30	28
QUESTION 6 (30 pts)	27	24	24
<b>INTERVIEW EVALUATION SCORE TOTAL</b>	<b>452</b>	<b>389</b>	<b>408</b>
<b>COMBINED WRITTEN &amp; INTERVIEW</b>	<b>917</b>	<b>839</b>	<b>863</b>
<b>FINAL RANKING</b>	<b>1</b>	<b>3</b>	<b>2</b>

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This content is from the eCFR and is authoritative but unofficial.

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## Title 2 – Grants and Agreements

### Subtitle A – Office of Management and Budget Guidance for Grants and Agreements

#### Chapter II – Office of Management and Budget Guidance

#### Part 200 – Uniform Administrative Requirements, Cost Principles, and Audit Requirements for Federal Awards

#### Subpart D – Post Federal Award Requirements

Source: 85 FR 49543, Aug. 13, 2020, unless otherwise noted.

Authority: 31 U.S.C. 503

Source: 78 FR 78608, Dec. 26, 2013, unless otherwise noted.

#### Procurement Standards

- § 200.317 Procurements by states.
- § 200.318 General procurement standards.
- § 200.319 Competition.
- § 200.320 Methods of procurement to be followed.
- § 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.
- § 200.322 Domestic preferences for procurements.
- § 200.323 Procurement of recovered materials.
- § 200.324 Contract cost and price.
- § 200.325 Federal awarding agency or pass-through entity review.
- § 200.326 Bonding requirements.
- § 200.327 Contract provisions.

#### PROCUREMENT STANDARDS

#### § 200.317 Procurements by states.

When procuring property and services under a Federal award, a State must follow the same policies and procedures it uses for procurements from its non-Federal funds. The State will comply with §§ 200.321, 200.322, and 200.323 and ensure that every purchase order or other contract includes any clauses required by § 200.327. All other non-Federal entities, including subrecipients of a State, must follow the procurement standards in §§ 200.318 through 200.327.

#### § 200.318 General procurement standards.

- (a) The non-Federal entity must have and use documented procurement procedures, consistent with State, local, and tribal laws and regulations and the standards of this section, for the acquisition of property or services required under a Federal award or subaward. The non-Federal entity's documented procurement procedures must conform to the procurement standards identified in §§ 200.317 through 200.327.

- (b) Non-Federal entities must maintain oversight to ensure that contractors perform in accordance with the terms, conditions, and specifications of their contracts or purchase orders.
- (c)
  - (1) The non-Federal entity must maintain written standards of conduct covering conflicts of interest and governing the actions of its employees engaged in the selection, award and administration of contracts. No employee, officer, or agent may participate in the selection, award, or administration of a contract supported by a Federal award if he or she has a real or apparent conflict of interest. Such a conflict of interest would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in or a tangible personal benefit from a firm considered for a contract. The officers, employees, and agents of the non-Federal entity may neither solicit nor accept gratuities, favors, or anything of monetary value from contractors or parties to subcontracts. However, non-Federal entities may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct must provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the non-Federal entity.
  - (2) If the non-Federal entity has a parent, affiliate, or subsidiary organization that is not a State, local government, or Indian tribe, the non-Federal entity must also maintain written standards of conduct covering organizational conflicts of interest. Organizational conflicts of interest means that because of relationships with a parent company, affiliate, or subsidiary organization, the non-Federal entity is unable or appears to be unable to be impartial in conducting a procurement action involving a related organization.
- (d) The non-Federal entity's procedures must avoid acquisition of unnecessary or duplicative items. Consideration should be given to consolidating or breaking out procurements to obtain a more economical purchase. Where appropriate, an analysis will be made of lease versus purchase alternatives, and any other appropriate analysis to determine the most economical approach.
- (e) To foster greater economy and efficiency, and in accordance with efforts to promote cost-effective use of shared services across the Federal Government, the non-Federal entity is encouraged to enter into state and local intergovernmental agreements or inter-entity agreements where appropriate for procurement or use of common or shared goods and services. Competition requirements will be met with documented procurement actions using strategic sourcing, shared services, and other similar procurement arrangements.
- (f) The non-Federal entity is encouraged to use Federal excess and surplus property in lieu of purchasing new equipment and property whenever such use is feasible and reduces project costs.
- (g) The non-Federal entity is encouraged to use value engineering clauses in contracts for construction projects of sufficient size to offer reasonable opportunities for cost reductions. Value engineering is a systematic and creative analysis of each contract item or task to ensure that its essential function is provided at the overall lower cost.
- (h) The non-Federal entity must award contracts only to responsible contractors possessing the ability to perform successfully under the terms and conditions of a proposed procurement. Consideration will be given to such matters as contractor integrity, compliance with public policy, record of past performance, and financial and technical resources. See also § 200.214.

- (i) The non-Federal entity must maintain records sufficient to detail the history of procurement. These records will include, but are not necessarily limited to, the following: Rationale for the method of procurement, selection of contract type, contractor selection or rejection, and the basis for the contract price.
- (j)
  - (1) The non-Federal entity may use a time-and-materials type contract only after a determination that no other contract is suitable and if the contract includes a ceiling price that the contractor exceeds at its own risk. Time-and-materials type contract means a contract whose cost to a non-Federal entity is the sum of:
    - (i) The actual cost of materials; and
    - (ii) Direct labor hours charged at fixed hourly rates that reflect wages, general and administrative expenses, and profit.
  - (2) Since this formula generates an open-ended contract price, a time-and-materials contract provides no positive profit incentive to the contractor for cost control or labor efficiency. Therefore, each contract must set a ceiling price that the contractor exceeds at its own risk. Further, the non-Federal entity awarding such a contract must assert a high degree of oversight in order to obtain reasonable assurance that the contractor is using efficient methods and effective cost controls.
- (k) The non-Federal entity alone must be responsible, in accordance with good administrative practice and sound business judgment, for the settlement of all contractual and administrative issues arising out of procurements. These issues include, but are not limited to, source evaluation, protests, disputes, and claims. These standards do not relieve the non-Federal entity of any contractual responsibilities under its contracts. The Federal awarding agency will not substitute its judgment for that of the non-Federal entity unless the matter is primarily a Federal concern. Violations of law will be referred to the local, state, or Federal authority having proper jurisdiction.

[85 FR 49543, Aug. 13, 2020, as amended at 86 FR 10440, Feb. 22, 2021]

## § 200.319 Competition.

- (a) All procurement transactions for the acquisition of property or services required under a Federal award must be conducted in a manner providing full and open competition consistent with the standards of this section and § 200.320.
- (b) In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, or invitations for bids or requests for proposals must be excluded from competing for such procurements. Some of the situations considered to be restrictive of competition include but are not limited to:
  - (1) Placing unreasonable requirements on firms in order for them to qualify to do business;
  - (2) Requiring unnecessary experience and excessive bonding;
  - (3) Noncompetitive pricing practices between firms or between affiliated companies;
  - (4) Noncompetitive contracts to consultants that are on retainer contracts;
  - (5) Organizational conflicts of interest;

- (6) Specifying only a “brand name” product instead of allowing “an equal” product to be offered and describing the performance or other relevant requirements of the procurement; and
  - (7) Any arbitrary action in the procurement process.
- (c) The non-Federal entity must conduct procurements in a manner that prohibits the use of statutorily or administratively imposed state, local, or tribal geographical preferences in the evaluation of bids or proposals, except in those cases where applicable Federal statutes expressly mandate or encourage geographic preference. Nothing in this section preempts state licensing laws. When contracting for architectural and engineering (A/E) services, geographic location may be a selection criterion provided its application leaves an appropriate number of qualified firms, given the nature and size of the project, to compete for the contract.
- (d) The non-Federal entity must have written procedures for procurement transactions. These procedures must ensure that all solicitations:
- (1) Incorporate a clear and accurate description of the technical requirements for the material, product, or service to be procured. Such description must not, in competitive procurements, contain features which unduly restrict competition. The description may include a statement of the qualitative nature of the material, product or service to be procured and, when necessary, must set forth those minimum essential characteristics and standards to which it must conform if it is to satisfy its intended use. Detailed product specifications should be avoided if at all possible. When it is impractical or uneconomical to make a clear and accurate description of the technical requirements, a “brand name or equivalent” description may be used as a means to define the performance or other salient requirements of procurement. The specific features of the named brand which must be met by offers must be clearly stated; and
  - (2) Identify all requirements which the offerors must fulfill and all other factors to be used in evaluating bids or proposals.
- (e) The non-Federal entity must ensure that all prequalified lists of persons, firms, or products which are used in acquiring goods and services are current and include enough qualified sources to ensure maximum open and free competition. Also, the non-Federal entity must not preclude potential bidders from qualifying during the solicitation period.
- (f) Noncompetitive procurements can only be awarded in accordance with § 200.320(c).

### § 200.320 Methods of procurement to be followed.

The non-Federal entity must have and use documented procurement procedures, consistent with the standards of this section and §§ 200.317, 200.318, and 200.319 for any of the following methods of procurement used for the acquisition of property or services required under a Federal award or sub-award.

- (a) **Informal procurement methods.** When the value of the procurement for property or services under a Federal award does not exceed the *simplified acquisition threshold (SAT)*, as defined in § 200.1, or a lower threshold established by a non-Federal entity, formal procurement methods are not required. The non-Federal entity may use informal procurement methods to expedite the completion of its transactions and minimize the associated administrative burden and cost. The informal methods used for procurement of property or services at or below the SAT include:
- (1) **Micro-purchases** —

- (i) **Distribution.** The acquisition of supplies or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (See the definition of *micro-purchase* in § 200.1). To the maximum extent practicable, the non-Federal entity should distribute micro-purchases equitably among qualified suppliers.
- (ii) **Micro-purchase awards.** Micro-purchases may be awarded without soliciting competitive price or rate quotations if the non-Federal entity considers the price to be reasonable based on research, experience, purchase history or other information and documents it files accordingly. Purchase cards can be used for micro-purchases if procedures are documented and approved by the non-Federal entity.
- (iii) **Micro-purchase thresholds.** The non-Federal entity is responsible for determining and documenting an appropriate micro-purchase threshold based on internal controls, an evaluation of risk, and its documented procurement procedures. The micro-purchase threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations. Non-Federal entities may establish a threshold higher than the Federal threshold established in the Federal Acquisition Regulations (FAR) in accordance with paragraphs (a)(1)(iv) and (v) of this section.
- (iv) **Non-Federal entity increase to the micro-purchase threshold up to \$50,000.** Non-Federal entities may establish a threshold higher than the micro-purchase threshold identified in the FAR in accordance with the requirements of this section. The non-Federal entity may self-certify a threshold up to \$50,000 on an annual basis and must maintain documentation to be made available to the Federal awarding agency and auditors in accordance with § 200.334. The self-certification must include a justification, clear identification of the threshold, and supporting documentation of any of the following:
  - (A) A qualification as a low-risk auditee, in accordance with the criteria in § 200.520 for the most recent audit;
  - (B) An annual internal institutional risk assessment to identify, mitigate, and manage financial risks; or,
  - (C) For public institutions, a higher threshold consistent with State law.
- (v) **Non-Federal entity increase to the micro-purchase threshold over \$50,000.** Micro-purchase thresholds higher than \$50,000 must be approved by the cognizant agency for indirect costs. The non-federal entity must submit a request with the requirements included in paragraph (a)(1)(iv) of this section. The increased threshold is valid until there is a change in status in which the justification was approved.

(2) **Small purchases –**

- (i) **Small purchase procedures.** The acquisition of property or services, the aggregate dollar amount of which is higher than the micro-purchase threshold but does not exceed the simplified acquisition threshold. If small purchase procedures are used, price or rate quotations must be obtained from an adequate number of qualified sources as determined appropriate by the non-Federal entity.

(ii) **Simplified acquisition thresholds.** The non-Federal entity is responsible for determining an appropriate simplified acquisition threshold based on internal controls, an evaluation of risk and its documented procurement procedures which must not exceed the threshold established in the FAR. When applicable, a lower simplified acquisition threshold used by the non-Federal entity must be authorized or not prohibited under State, local, or tribal laws or regulations.

(b) **Formal procurement methods.** When the value of the procurement for property or services under a Federal financial assistance award exceeds the SAT, or a lower threshold established by a non-Federal entity, formal procurement methods are required. Formal procurement methods require following documented procedures. Formal procurement methods also require public advertising unless a non-competitive procurement can be used in accordance with § 200.319 or paragraph (c) of this section. The following formal methods of procurement are used for procurement of property or services above the simplified acquisition threshold or a value below the simplified acquisition threshold the non-Federal entity determines to be appropriate:

(1) **Sealed bids.** A procurement method in which bids are publicly solicited and a firm fixed-price contract (lump sum or unit price) is awarded to the responsible bidder whose bid, conforming with all the material terms and conditions of the invitation for bids, is the lowest in price. The sealed bids method is the preferred method for procuring construction, if the conditions.

(i) In order for sealed bidding to be feasible, the following conditions should be present:

- (A) A complete, adequate, and realistic specification or purchase description is available;
- (B) Two or more responsible bidders are willing and able to compete effectively for the business; and
- (C) The procurement lends itself to a firm fixed price contract and the selection of the successful bidder can be made principally on the basis of price.

(ii) If sealed bids are used, the following requirements apply:

- (A) Bids must be solicited from an adequate number of qualified sources, providing them sufficient response time prior to the date set for opening the bids, for local, and tribal governments, the invitation for bids must be publicly advertised;
- (B) The invitation for bids, which will include any specifications and pertinent attachments, must define the items or services in order for the bidder to properly respond;
- (C) All bids will be opened at the time and place prescribed in the invitation for bids, and for local and tribal governments, the bids must be opened publicly;
- (D) A firm fixed price contract award will be made in writing to the lowest responsive and responsible bidder. Where specified in bidding documents, factors such as discounts, transportation cost, and life cycle costs must be considered in determining which bid is lowest. Payment discounts will only be used to determine the low bid when prior experience indicates that such discounts are usually taken advantage of; and
- (E) Any or all bids may be rejected if there is a sound documented reason.

(2) **Proposals.** A procurement method in which either a fixed price or cost-reimbursement type contract is awarded. Proposals are generally used when conditions are not appropriate for the use of sealed bids. They are awarded in accordance with the following requirements:

- (i) Requests for proposals must be publicized and identify all evaluation factors and their relative importance. Proposals must be solicited from an adequate number of qualified offerors. Any response to publicized requests for proposals must be considered to the maximum extent practical;
  - (ii) The non-Federal entity must have a written method for conducting technical evaluations of the proposals received and making selections;
  - (iii) Contracts must be awarded to the responsible offeror whose proposal is most advantageous to the non-Federal entity, with price and other factors considered; and
  - (iv) The non-Federal entity may use competitive proposal procedures for qualifications-based procurement of architectural/engineering (A/E) professional services whereby offeror's qualifications are evaluated and the most qualified offeror is selected, subject to negotiation of fair and reasonable compensation. The method, where price is not used as a selection factor, can only be used in procurement of A/E professional services. It cannot be used to purchase other types of services through A/E firms that are a potential source to perform the proposed effort.
- (c) **Noncompetitive procurement.** There are specific circumstances in which noncompetitive procurement can be used. Noncompetitive procurement can only be awarded if one or more of the following circumstances apply:
- (1) The acquisition of property or services, the aggregate dollar amount of which does not exceed the micro-purchase threshold (see paragraph (a)(1) of this section);
  - (2) The item is available only from a single source;
  - (3) The public exigency or emergency for the requirement will not permit a delay resulting from publicizing a competitive solicitation;
  - (4) The Federal awarding agency or pass-through entity expressly authorizes a noncompetitive procurement in response to a written request from the non-Federal entity; or
  - (5) After solicitation of a number of sources, competition is determined inadequate.

### **§ 200.321 Contracting with small and minority businesses, women's business enterprises, and labor surplus area firms.**

- (a) The non-Federal entity must take all necessary affirmative steps to assure that minority businesses, women's business enterprises, and labor surplus area firms are used when possible.
- (b) Affirmative steps must include:
  - (1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;
  - (2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential sources;
  - (3) Dividing total requirements, when economically feasible, into smaller tasks or quantities to permit maximum participation by small and minority businesses, and women's business enterprises;
  - (4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority businesses, and women's business enterprises;



- (5) Using the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and
- (6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (b)(1) through (5) of this section.

### § 200.322 Domestic preferences for procurements.

- (a) As appropriate and to the extent consistent with law, the non-Federal entity should, to the greatest extent practicable under a Federal award, provide a preference for the purchase, acquisition, or use of goods, products, or materials produced in the United States (including but not limited to iron, aluminum, steel, cement, and other manufactured products). The requirements of this section must be included in all subawards including all contracts and purchase orders for work or products under this award.
- (b) For purposes of this section:
  - (1) "Produced in the United States" means, for iron and steel products, that all manufacturing processes, from the initial melting stage through the application of coatings, occurred in the United States.
  - (2) "Manufactured products" means items and construction materials composed in whole or in part of non-ferrous metals such as aluminum; plastics and polymer-based products such as polyvinyl chloride pipe; aggregates such as concrete; glass, including optical fiber; and lumber.

### § 200.323 Procurement of recovered materials.

A non-Federal entity that is a state agency or agency of a political subdivision of a state and its contractors must comply with section 6002 of the Solid Waste Disposal Act, as amended by the Resource Conservation and Recovery Act. The requirements of Section 6002 include procuring only items designated in guidelines of the Environmental Protection Agency (EPA) at 40 CFR part 247 that contain the highest percentage of recovered materials practicable, consistent with maintaining a satisfactory level of competition, where the purchase price of the item exceeds \$10,000 or the value of the quantity acquired during the preceding fiscal year exceeded \$10,000; procuring solid waste management services in a manner that maximizes energy and resource recovery; and establishing an affirmative procurement program for procurement of recovered materials identified in the EPA guidelines.

### § 200.324 Contract cost and price.

- (a) The non-Federal entity must perform a cost or price analysis in connection with every procurement action in excess of the Simplified Acquisition Threshold including contract modifications. The method and degree of analysis is dependent on the facts surrounding the particular procurement situation, but as a starting point, the non-Federal entity must make independent estimates before receiving bids or proposals.
- (b) The non-Federal entity must negotiate profit as a separate element of the price for each contract in which there is no price competition and in all cases where cost analysis is performed. To establish a fair and reasonable profit, consideration must be given to the complexity of the work to be performed, the risk borne by the contractor, the contractor's investment, the amount of subcontracting, the quality of its record of past performance, and industry profit rates in the surrounding geographical area for similar work.

- (c) Costs or prices based on estimated costs for contracts under the Federal award are allowable only to the extent that costs incurred or cost estimates included in negotiated prices would be allowable for the non-Federal entity under subpart E of this part. The non-Federal entity may reference its own cost principles that comply with the Federal cost principles.
- (d) The cost plus a percentage of cost and percentage of construction cost methods of contracting must not be used.

### § 200.325 Federal awarding agency or pass-through entity review.

- (a) The non-Federal entity must make available, upon request of the Federal awarding agency or pass-through entity, technical specifications on proposed procurements where the Federal awarding agency or pass-through entity believes such review is needed to ensure that the item or service specified is the one being proposed for acquisition. This review generally will take place prior to the time the specification is incorporated into a solicitation document. However, if the non-Federal entity desires to have the review accomplished after a solicitation has been developed, the Federal awarding agency or pass-through entity may still review the specifications, with such review usually limited to the technical aspects of the proposed purchase.
- (b) The non-Federal entity must make available upon request, for the Federal awarding agency or pass-through entity pre-procurement review, procurement documents, such as requests for proposals or invitations for bids, or independent cost estimates, when:
  - (1) The non-Federal entity's procurement procedures or operation fails to comply with the procurement standards in this part;
  - (2) The procurement is expected to exceed the Simplified Acquisition Threshold and is to be awarded without competition or only one bid or offer is received in response to a solicitation;
  - (3) The procurement, which is expected to exceed the Simplified Acquisition Threshold, specifies a "brand name" product;
  - (4) The proposed contract is more than the Simplified Acquisition Threshold and is to be awarded to other than the apparent low bidder under a sealed bid procurement; or
  - (5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the Simplified Acquisition Threshold.
- (c) The non-Federal entity is exempt from the pre-procurement review in paragraph (b) of this section if the Federal awarding agency or pass-through entity determines that its procurement systems comply with the standards of this part.
  - (1) The non-Federal entity may request that its procurement system be reviewed by the Federal awarding agency or pass-through entity to determine whether its system meets these standards in order for its system to be certified. Generally, these reviews must occur where there is continuous high-dollar funding, and third-party contracts are awarded on a regular basis;
  - (2) The non-Federal entity may self-certify its procurement system. Such self-certification must not limit the Federal awarding agency's right to survey the system. Under a self-certification procedure, the Federal awarding agency may rely on written assurances from the non-Federal entity that it is complying with these standards. The non-Federal entity must cite specific policies, procedures, regulations, or standards as being in compliance with these requirements and have its system available for review.

### § 200.326 Bonding requirements.

For construction or facility improvement contracts or subcontracts exceeding the Simplified Acquisition Threshold, the Federal awarding agency or pass-through entity may accept the bonding policy and requirements of the non-Federal entity provided that the Federal awarding agency or pass-through entity has made a determination that the Federal interest is adequately protected. If such a determination has not been made, the minimum requirements must be as follows:

- (a) A bid guarantee from each bidder equivalent to five percent of the bid price. The “bid guarantee” must consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder will, upon acceptance of the bid, execute such contractual documents as may be required within the time specified.
- (b) A performance bond on the part of the contractor for 100 percent of the contract price. A “performance bond” is one executed in connection with a contract to secure fulfillment of all the contractor's requirements under such contract.
- (c) A payment bond on the part of the contractor for 100 percent of the contract price. A “payment bond” is one executed in connection with a contract to assure payment as required by law of all persons supplying labor and material in the execution of the work provided for in the contract.

### § 200.327 Contract provisions.

The non-Federal entity's contracts must contain the applicable provisions described in appendix II to this part.

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This content is from the eCFR and is authoritative but unofficial.

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## Title 49 –Transportation

### Subtitle A –Office of the Secretary of Transportation

#### Part 26 Participation by Disadvantaged Business Enterprises in Department of Transportation Financial Assistance Programs

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- § 26.3 To whom does this part apply?
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§ 26.85 Interstate certification.

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

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§ 26.101 What compliance procedures apply to recipients?

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

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**Appendix A to Part 26**

Guidance Concerning Good Faith Efforts

**Appendix B to Part 26**

Uniform Report of DBE Awards or Commitments and Payments  
Form

**Appendix C to Part 26**

DBE Business Development Program Guidelines

**Appendix D to Part 26**

Mentor-Protégé Program Guidelines

**Appendix E to Part 26**

Individual Determinations of Social and Economic Disadvantage

**Appendix F to Part 26**

Uniform Certification Application Form

**Appendix G to Part 26**

Personal Net Worth Statement

## **PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS**

**Authority:** 23 U.S.C. 324; 42 U.S.C. 2000d, et seq.; Sec. 1101(b), Pub. L. 114–94, 129 Stat. 1312, 1324; 49 U.S.C. 47113, 47123; Sec. 150, Pub. L. 115–254, 132 Stat. 3215.

**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 promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
- (g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59592, Oct. 2, 2014]

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

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

(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.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59592, Oct. 2, 2014]

## § 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.*).

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

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

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

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

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

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

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

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

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

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

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

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
  - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
  - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
  - (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
  - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kirbati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
  - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

- (vi) Women;
  - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- (3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

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

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

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

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

[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; 79 FR 59592, Oct. 2, 2014]

## § 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).
- (d) You must maintain records documenting a firm's compliance with the requirements of this part. At a minimum, you must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.
- (e) The State department of transportation in each UCP established pursuant to § 26.81 of this part must report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

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

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 76 FR 5096, Jan. 28, 2011; 79 FR 59593, Oct. 2, 2014]

### § 26.13 What assurances must recipients and contractors make?

- (a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements 49 CFR part 26. The recipient shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).
- (b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:
  - (1) Withholding monthly progress payments;
  - (2) Assessing sanctions;
  - (3) Liquidated damages; and/or
  - (4) Disqualifying the contractor from future bidding as non-responsible.

[79 FR 59593, Oct. 2, 2014]

### § 26.15 How can recipients apply for exemptions or waivers?

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

- (b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:
- (1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.
  - (2) Your application must show that—
    - (i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;
    - (ii) Conditions in your jurisdiction are appropriate for implementing the proposal;
    - (iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and
    - (iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.
  - (3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:
    - (i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in § 26.49;
    - (ii) Your level of DBE participation continues to be consistent with the objectives of this part;
    - (iii) There is a reasonable limitation on the duration of your modified program; and
    - (iv) Any other conditions the Secretary makes on the grant of the waiver.
  - (4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

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

### § 26.21 Who must have a DBE program?

- (a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:
- (1) All FHWA primary recipients receiving funds authorized by a statute to which this part applies;

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

(b)

- (1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).
- (2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.
- (c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

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

### **§ 26.23 What is the requirement for a policy statement?**

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

### **§ 26.25 What is the requirement for a liaison officer?**

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

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

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

### **§ 26.29 What prompt payment mechanisms must recipients have?**

- (a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.
- (b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

- (1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.
  - (2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.
  - (3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.
- (c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- (d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.
- (e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:
- (1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.
  - (2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.
  - (3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[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](http://www.census.gov/epcd/cbp/view/cbpview.html).) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

- (2) **Use a bidders list.** Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, you must establish a mechanism (documented in your goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on your DOT-assisted contracts.
  - (3) **Use data from a disparity study.** Use a percentage figure derived from data in a valid, applicable disparity study.
  - (4) **Use the goal of another DOT recipient.** If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.
  - (5) **Alternative methods.** Except as otherwise provided in this paragraph, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market. The exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section, is not an acceptable alternative means of determining the availability of DBEs.
- (d) **Step 2.** Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.
- (1) There are many types of evidence that must be considered when adjusting the base figure. These include:
    - (i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;
    - (ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and
    - (iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.
  - (2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:
    - (i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;
    - (ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

- (3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the “but for” factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.
- (e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:
    - (1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming three fiscal years.
    - (2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.
    - (3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.
      - (i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.
      - (ii) A project goal covers the entire length of the project to which it applies.
      - (iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.
      - (iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.
  - (f)
    - (1)
      - (i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency's Web site.
      - (ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.
      - (iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.
      - (iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.
      - (v) You may make, for informational purposes, projections of your expected DBE achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.

- (2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.
- (3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see 26.51(c)).
- (4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration's review suggests that your overall goal has not been correctly calculated or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the operating administration will be guided by goal setting principles and best practices identified by the Department in guidance issued pursuant to § 26.9.
- (5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:
  - (i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and
  - (ii) Avoid imposing undue burdens on non-DBEs.
- (6) Timely submission and operating administration approval of your overall goal is a condition of eligibility for DOT financial assistance.
- (7) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive DOT financial assistance.

(g)

- (1) In establishing an overall goal, you must provide for consultation and publication. This includes:
  - (i) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must

document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.

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

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

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

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

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

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

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

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

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

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

(3)

(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

- (ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.
- (4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.
- (5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in § 26.103 or § 26.105 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:
  - (i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;
  - (ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or
  - (iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.
- (d) If, as recipient, your Uniform Report of DBE Awards or Commitments and Payments or other information coming to the attention of FTA, FHWA, or FAA, demonstrates that current trends make it unlikely that you will achieve DBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FHWA, FTA, or FAA, as applicable, may require you to make further good faith efforts, such as by modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

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

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

- (a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.
  - (1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.
  - (2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout 49 CFR part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.
  - (3) FTA recipient's failure to comply with the requirements set forth in paragraph (a) of this section may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).
  - (4) FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.



- (b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal.
  - (1) In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying § 26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will bid on during the fiscal year in question, less the portion(s) attributable to the manufacturing process performed entirely by the transit vehicle manufacturer's own forces.
    - (i) You must consider and include in your base figure all domestic contracting opportunities made available to non-DBE firms; and
    - (ii) You must exclude from this base figure funds attributable to work performed outside the United States and its territories, possessions, and commonwealths.
    - (iii) In establishing an overall goal, the transit vehicle manufacturer must provide for public participation. This includes consultation with interested parties consistent with § 26.45(g).
  - (2) The requirements of this part with respect to submission and approval of overall goals apply to you as they do to recipients.
- (c) Transit vehicle manufacturers awarded must comply with the reporting requirements of § 26.11 of this part including the requirement to submit the Uniform Report of Awards or Commitments and Payments, in order to remain eligible to bid on FTA assisted transit vehicle procurements.
- (d) Transit vehicle manufacturers must implement all other applicable requirements of this part, except those relating to UCPs and DBE certification procedures.
- (e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.
- (f) As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

[79 FR 59594, Oct. 2, 2014]

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

- (a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.
- (b) Race-neutral means include, but are not limited to, the following:
  - (1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under § 26.39 of this part.

- (2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);
  - (3) Providing technical assistance and other services;
  - (4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);
  - (5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;
  - (6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;
  - (7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;
  - (8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
  - (9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.
- (c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.
- (d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.
- (e) The following provisions apply to the use of contract goals:
- (1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.
  - (2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.
  - (3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

- (4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.
- (f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:
  - (1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order meet your overall goal.

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

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

*Example to paragraph (f)(2):* In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

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

*Example to paragraph (f)(3):* Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each

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

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

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

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

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

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

- (a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:
- (1) Documents that it has obtained enough DBE participation to meet the goal; or
  - (2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.
- (b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

- (1) Award of the contract will be conditioned on meeting the requirements of this section;
- (2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:
  - (i) The names and addresses of DBE firms that will participate in the contract;
  - (ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
  - (iii) The dollar amount of the participation of each DBE firm participating;
  - (iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
  - (v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
  - (vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and
- (3)
  - (i) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—
    - (A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or
    - (B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.
  - (ii) Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.
- (c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.
- (d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.
  - (1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

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

- (v) The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;
  - (vii) You have determined that the listed DBE subcontractor is not a responsible contractor;
  - (vi) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;
  - (vii) The listed DBE is ineligible to receive DBE credit for the type of work required;
  - (viii) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
  - (ix) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.
- (4) Before transmitting to you its request to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to you, of its intent to request to terminate and/or substitute, and the reason for the request.
- (5) The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise you and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why you should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), you may provide a response period shorter than five days.
- (6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.
- (g) When a DBE subcontractor is terminated as provided in paragraph (f) of this section, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.
- (h) You must include in each prime contract the contract clause required by § 26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate if the prime contractor fails to comply with the requirements of this section.
- (i) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

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

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

### § 26.55 How is DBE participation counted toward goals?

- (a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.
  - (1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).
  - (2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.
  - (3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.
- (b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.
- (c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.
  - (1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors.
  - (2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.



- (3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.
  - (4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
  - (5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.
- (d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:
- (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.
  - (2) The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
  - (3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.
  - (4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
  - (5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.

*Example to paragraph (d)(5):* DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

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

*Example to paragraph (d)(6):* DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

- (7) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.
- (e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
  - (1)
    - (i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.
    - (ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
  - (2)
    - (i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.
    - (ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
      - (A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.
      - (B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
      - (C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).
  - (3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of

materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

- (4) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expediter) on a contract-by-contract basis.
- (f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in § 26.87(i).
- (g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.
- (h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

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

## Subpart D—Certification Standards

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

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

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

## § 26.63 What rules govern group membership determinations?

(a)

- (1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see § 26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.
- (2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.
- (3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate § 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

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

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

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

## § 26.65 What rules govern business size determinations?

- (a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.
- (b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE for the purposes of Federal Highway Administration and Federal Transit Administration-assisted work in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.104), over the firm's previous three fiscal years, in excess of \$26.29 million. The Department will adjust this amount for inflation on an annual basis. The adjusted amount will be published on the Department's website in subsequent years.
- (c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

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

## § 26.67 What rules determine social and economic disadvantage?

### (a) *Presumption of disadvantage.*

- (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.
- (2)
  - (i) You must require each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that he or she has a personal net worth that does not exceed \$1.32 million.
  - (ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.
  - (iii) In determining an individual's net worth, you must observe the following requirements:
    - (A) Exclude an individual's ownership interest in the applicant firm;
    - (B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.
    - (C) Do not use a contingent liability to reduce an individual's net worth.
    - (D) With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.
  - (iv) Notwithstanding any provision of Federal or State law, you must not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, that you must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other State to which the individual's firm has applied for certification under § 26.85 of this part.

(b) *Rebuttal of presumption of disadvantage.*

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

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

*Example to paragraph (b)(1)(i):* An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than \$1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. The recipient may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than \$1.32 million.

(ii)

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

- (1) Whether the average adjusted gross income of the owner over the most recent three year period exceeds \$350,000;
- (2) Whether the income was unusual and not likely to occur in the future;
- (3) Whether the earnings were offset by losses;
- (4) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
- (5) Other evidence that income is not indicative of lack of economic disadvantage; and
- (6) Whether the total fair market value of the owner's assets exceed \$6 million.

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

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

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

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

(c) **Transfers within two years.**

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

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

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

[79 FR 59596, Oct. 2, 2014]

## § 26.69 What rules govern determinations of ownership?

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

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

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

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

(c)

- (1) The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.
- (2) Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.
- (3) The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.
- (4) Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

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

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

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

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

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



- (2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.
- (e) The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- (f) The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:
  - (1) The owner's expertise must be—
    - (i) In a specialized field;
    - (ii) Of outstanding quality;
    - (iii) In areas critical to the firm's operations;
    - (iv) Indispensable to the firm's potential success;
    - (v) Specific to the type of work the firm performs; and
    - (vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
  - (2) The individual whose expertise is relied upon must have a significant financial investment in the firm.
- (g) You must always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual—
  - (1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
  - (2) Through inheritance, or otherwise because of the death of the former owner.
- (h)
  - (1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—
    - (i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
    - (ii) Involved in the same or a similar line of business; or
    - (iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.
  - (2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

- (i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
  - (ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.
- (i) You must apply the following rules in situations in which marital assets form a basis for ownership of a firm:
- (1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, you must deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. You do not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.
  - (2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.
- (j) You may consider the following factors in determining the ownership of a firm. However, you must not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because—
- (1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (h) of this section;
  - (2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
  - (3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, you must give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

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

## § 26.71 What rules govern determinations concerning control?

- (a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.
- (b) Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.

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

- (g) The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- (h) If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, you must not deny certification solely on the ground that the person lacks the license or credential. However, you may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.
- (i)
- (1) You may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. You may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.
- (2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.
- (j) In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.
- (k)
- (1) A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

- (2) If you cannot determine that the socially and economically disadvantaged owners—as distinct from the family as a whole—control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- (l) Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the nondisadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm demonstrates to you, by clear and convincing evidence, that:
  - (1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
  - (2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a nondisadvantaged individual who formerly owned and/or controlled the firm.
- (m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.
- (n) You must grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must verify the disadvantaged owner's control of the firm in the additional type of work.
  - (1) The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to DOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification. If your Directory does not list types of work for any firm in a manner consistent with this paragraph (a)(1), you must update the Directory entry for that firm to meet the requirements of this paragraph (a)(1) by August 28, 2011.
  - (2) Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.
  - (3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and

detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

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

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

## § 26.73 What are other rules affecting certification?

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

- (2) You must not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.
- (c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.
- (d) Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.
- (e) An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm—even a DBE firm—cannot be an eligible DBE.
  - (1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
  - (2) You may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

*Example 1:* Socially and economically disadvantaged individuals own 100 percent of a holding company, which has a wholly-owned subsidiary. The subsidiary may be certified, if it meets all other requirements.

*Example 2:* Disadvantaged individuals own 100 percent of the holding company, which owns 51 percent of a subsidiary. The subsidiary may be certified, if all other requirements are met.

*Example 3:* Disadvantaged individuals own 80 percent of the holding company, which in turn owns 70 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is 56 percent (80 percent of the 70 percent). This is more than 51 percent, so you may certify the subsidiary, if all other requirements are met.

*Example 4:* Same as Example 2 or 3, but someone other than the socially and economically disadvantaged owners of the parent or holding company controls the subsidiary. Even though the subsidiary is owned by disadvantaged individuals, through the holding or parent company, you cannot certify it because it fails to meet control requirements.

*Example 5:* Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by

disadvantaged individuals is about 31 percent. This is less than 51 percent, so you cannot certify the subsidiary.

*Example 6:* The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of § 26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

- (f) Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.
- (g) You must not require a DBE firm to be prequalified as a condition for certification.
- (h) A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of § 26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in § 26.71.
- (i) The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).
  - (1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:
    - (i) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
    - (ii) The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and
    - (iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.
  - (2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (see Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (e.g., information that would appear in your DBE Directory).
  - (3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.



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

## Subpart E—Certification Procedures

### § 26.81 What are the requirements for Unified Certification Programs?

- (a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).
  - (1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.
  - (2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.
  - (3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.
  - (4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.
  - (5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.
- (b) The UCP shall make all certification decisions on behalf of all DOT recipients in the state with respect to participation in the DOT DBE Program.
  - (1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.
  - (2) The UCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.
  - (3) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of this part.
- (c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on a contract on which a firm seeks to participate as a DBE.

- (d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.
- (e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.
- (f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.
- (g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from other states certified under the provisions of this part), the information required by § 26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.
- (h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

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

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

- (a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.
- (b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.
- (c)
  - (1) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:
    - (i) Perform an on-site visit to the firm's principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
    - (ii) Analyze documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing
    - (iii) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;

- (iv) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;
- (v) Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.
- (vi) Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program;
- (vii) Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.
- (viii) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in § 26.85 of this part.

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

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

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

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

(e) [Reserved]

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

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

(h)

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

- (2) You may not require DBEs to reapply for certification or undergo a recertification process. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under § 26.88), a complaint, or other information concerning the firm's eligibility. If information comes to your attention that leads you to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.
- (i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.
  - (1) Changes in management responsibility among members of a limited liability company are covered by this requirement.
  - (2) You must attach supporting documentation describing in detail the nature of such changes.
  - (3) The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under § 26.109(c).
- (j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under § 26.109(c).
- (k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to DOT under § 26.89.
- (l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.
- (m) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under § 26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the "end of the line," behind other applications that have been made since the firm's

previous application was withdrawn. You may also apply the waiting period provided under § 26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

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

### § 26.85 Interstate certification.

- (a) This section applies with respect to any firm that is currently certified in its home state.
- (b) When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.
  - (1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.
  - (2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.
- (c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.
  - (1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification. This includes affidavits of no change (see § 26.83(j)) and any notices of changes (see § 26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any other recipient concerning your application or status as a DBE firm.
  - (2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.
  - (3) If you have filed a certification appeal with DOT (see § 26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.
  - (4) You must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.
    - (i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by § 26.85(c)(1), is an identical copy of the information submitted to State A.
    - (ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.
- (d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

- (1) Within seven days contact State A and request a copy of the site visit review report for the firm (see § 26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by "State A" or any other State of not complying with such requests in a timely manner is noncompliance with this Part.
- (2) Determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:
  - (i) Evidence that State A's certification was obtained by fraud;
  - (ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;
  - (iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;
  - (iv) The State law of State B requires a result different from that of the State law of State A.
  - (v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.
- (3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.
- (4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.
  - (i) This notice must state with particularity the specific reasons why State B believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to State B with respect to these reasons.
  - (ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.
  - (iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.
  - (iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.
  - (v) State B must issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.
  - (vi) The firm's application for certification is stayed pending the outcome of this process.

- (vii) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under s§ 26.89 of this part.
- (e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.
- (f)
  - (1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:
    - (i) The name of the firm;
    - (ii) The name(s) of the firm's owner(s);
    - (iii) The type and date of the action;
    - (iv) The reason for the action.
  - (2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.
  - (3) For any such firm that is on the list, you must promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, you must provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, you must then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.
- (g) You must implement the requirements of this section beginning January 1, 2012.

[76 FR 5100, Jan. 28, 2011]

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

- (a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based must be made available to the applicant, on request.
- (b) [Reserved]
- (c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm. An applicant's appeal of your decision to the Department pursuant to § 26.89 does not extend this period.

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

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

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

- (a) **Ineligibility complaints.**

- (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities must be protected as provided in § 26.109(b).
- (2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.
- (3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

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

- (c) **DOT directive to initiate proceeding.**

- (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.
- (2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
- (3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

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



- (1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.
  - (2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under § 26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.
  - (3) The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, you bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as you would during a hearing.
- (e) **Separation of functions.** You must ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.
- (1) Your method of implementing this requirement must be made part of your DBE program.
  - (2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.
  - (3) Before a UCP is operational in its state, a small airport or small transit authority (*i.e.*, an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.
- (f) **Grounds for decision.** You may base a decision to remove a firm's eligibility only on one or more of the following grounds:
- (1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;
  - (2) Information or evidence not available to you at the time the firm was certified;
  - (3) Information relevant to eligibility that has been concealed or misrepresented by the firm;
  - (4) A change in the certification standards or requirements of the Department since you certified the firm;
  - (5) Your decision to certify the firm was clearly erroneous;
  - (6) The firm has failed to cooperate with you (see § 26.109(c));
  - (7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see § 26.73(a)(2)); or
  - (8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.
- (g) **Notice of decision.** Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability

of an appeal to the Department of Transportation under § 26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

(h) [Reserved]

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

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

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

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

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

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

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

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

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

## § 26.88 Summary suspension of certification.

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

(b)

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

- (2) In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this section, the recipient shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.
- (c) The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.
- (d) When a firm is suspended pursuant to paragraph (a) or (b) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.
- (e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under § 26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.
- (f) While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.
- (g) Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under § 26.87 of this part. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.
- (h) The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. Department of Transportation under § 26.89 of this part, as a constructive decertification.

[79 FR 59599, Oct. 2, 2014]

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

- (a)
  - (1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms, you may make an administrative appeal to the Department.
  - (2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in § 26.87(c)), you may appeal to the Department if the recipient does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

- (3) Send appeals to the following address: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.
- (b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.
- (c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal or in the interest of justice.
- (d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to you to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.
- (e) The Department makes its decision based solely on the entire administrative record as supplemented by the appeal. The Department does not make a de novo review of the matter and does not conduct a hearing. The Department may also supplement the administrative record by adding relevant information made available by the DOT Office of Inspector General; Federal, State, or local law enforcement authorities; officials of a DOT operating administration or other appropriate DOT office; a recipient; or a firm or other private party.
- (f) As a recipient, when you provide supplementary information to the Department, you shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.
  - (1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.
  - (2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.
  - (3) The Department is not required to reverse your decision if the Department determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

- (4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.
  - (5) The Department does not uphold your decision based on grounds not specified in your decision.
  - (6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.
  - (7) The Department provides written notice of its decision to you, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for the Department's decision, including specific references to the evidence in the record that supports each reason for the decision.
  - (8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.
- (g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

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

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

- (a) If you are the recipient from whose action an appeal under § 26.89 is taken, the decision is binding. It is not binding on other recipients.
- (b) If you are a recipient to which a DOT determination under § 26.89 is applicable, you must take the following action:
  - (1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in § 26.87(i) take effect.
  - (2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in § 26.87.
  - (3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

- (4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.
- (5) If the Department affirms your determination, no further action is necessary.
- (c) Where DOT has upheld your denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under § 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

## Subpart F—Compliance and Enforcement

### § 26.101 What compliance procedures apply to recipients?

- (a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under § 26.103 or § 26.105 or appropriate program sanctions by the concerned operating administration, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.
- (b) As provided in statute, you will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because you have been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

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

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

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

- (c) **Reasonable cause notice.** If it appears, from the investigation of a complaint or the results of a compliance review, that you, as a recipient, are in noncompliance with this part, the appropriate DOT office promptly sends you, return receipt requested, a written notice advising you that there is reasonable cause to find you in noncompliance. The notice states the reasons for this finding and directs you to reply within 30 days concerning whether you wish to begin conciliation.
- (d) **Conciliation.**
- (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.
  - (2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.
  - (3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.
  - (4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.
- (e) **Enforcement actions.**
- (1) Enforcement actions are taken as provided in this subpart.
  - (2) Applicable findings in enforcement proceedings are binding on all DOT offices.

### § 26.105 What enforcement actions apply in FAA programs?

- (a) Compliance with all requirements of this part by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.
- (b) The provisions of § 26.103(b) and this section apply to enforcement actions in FAA programs.
- (c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

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

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

- (c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.
- (d) The Department may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR part 31.
- (e) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any DOT-assisted program or otherwise violates applicable Federal statutes.

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

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

- (a) **Availability of records.**
  - (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.
  - (2) Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, you must transmit this information to DOT in any certification appeal proceeding under § 26.89 of this part or to any other state to which the individual's firm has applied for certification under § 26.85 of this part.
- (b) **Confidentiality of information on complainants.** Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.
- (c) **Cooperation.** All participants in the Department's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).



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

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

## 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 for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient 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, you have the responsibility 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, based on the regulations and the guidance in this Appendix.

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. Determinations should not be made using quantitative formulas.

- 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.

- (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the subcontract. The bidder should 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 (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

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 with their offer for the subcontract.

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.

(1) 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 status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with

its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

- 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, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. 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 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. As provided in § 26.53(b)(2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.
- VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

[79 FR 59600, Oct. 2, 2014]

## Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

### INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/ COMMITMENTS AND PAYMENTS

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

1. Indicate the DOT (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 you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten 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. For FHWA and FTA recipients, 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 the report is due to the FAA, data should cover the entire year.
6. Provide the name and address of the recipient.
7. State your overall DBE goal(s) established for the Federal fiscal year of the report being 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 projections (both of which include gender-conscious/neutral projections). The Race Conscious projection should be based on measures 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 projection should include measures 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.

## Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)–10(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.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the *total dollar amount* for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the *total number* of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the *dollar amount* awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the *number* of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR part 26, all prime contracts awarded to DBES are regarded as race-neutral.

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 in item 7 and the explanation in item 8 of project types 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.

Line 9: Subcontracts awarded/committed this period: 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.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(B). Provide the total number of all sub contracts assisted with DOT funds that were awarded or committed during this reporting period.

9(C). From the total dollar amount of sub contracts awarded/committed this period in item 9(A), provide the total dollar amount awarded in sub contracts to DBEs.

9(D). From the total number of sub contracts awarded or committed in item 9(B), specify the number of sub contracts awarded or committed to DBEs.

9(E). From the total dollar amount of sub contracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using Race Conscious measures.

9(F). From the total number of sub contracts awarded or committed to DBEs this period, provide the number of sub contracts awarded or committed to DBEs using Race Conscious measures.

9(G). From the total dollar amount of sub contracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using Race Neutral measures.

9(H). From the total number of sub contracts awarded/committed to DBEs this period, provide the number of sub contracts awarded to DBEs using Race Neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)–10(B). These fields are unavailable for data entry.

10(C–H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

## Section B: Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs This Period

11 –17. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 17(C) should equal the Total Dollar Amount to DBEs in 10(C). Likewise the total number of contracts to DBEs in 17(F) should equal the Total Number of Contracts to DBEs in 10(D).

Line 16: The “Non-Minority” category is reserved for any firms whose owners are not members of the presumptively disadvantaged groups already listed, but who are either “women” OR eligible for the DBE program on an individual basis. All DBE firms must be certified by the Unified Certification Program to be counted in this report.

## Section C: Payments on Ongoing Contracts

Line 18(A–E). Submit information on contracts that are currently in progress. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

18 (A). Provide the total dollar amount paid to all firms performing work on contracts.

18 (B). Provide the total number of contracts where work was performed during the reporting period.

18 (C). From the total number of contracts provided in 18(A) provide the total number of contracts that are currently being performed by DBE firms for which payments have been made.

18 (D). From the total dollar amount paid to all firms in 18(A), provide the total dollar value paid to DBE firms currently performing work during this period.

18 (E). Provide the total number of DBE firms that received payment during this reporting period. For example, while 3 contracts may be active during this period, one DBE firm may be providing supplies or services on all three contracts. This field should only list the number of DBE firms performing work.

18 (F). Of all payments made during this period, calculate the percentage going to DBEs. Divide the total dollar value to DBEs in item 18(D) by the total dollars of all payments in 18(B). Round percentage to the nearest tenth.

## Section D: Actual Payments on Contracts Completed This Reporting Period

This section should provide information only on contracts that are closed during this period. All dollar amounts are to reflect the entire Federal share of such contracts, and should be rounded to the nearest dollar.

- 19 (A). Provide the total number of contracts completed during this reporting period that used Race Conscious measures. Race Conscious contracts are those with contract goals or another race conscious measure.
- 19 (B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious measures.
- 19 (C). From the total dollar value of prime contracts completed this period in 19(B), provide the total dollar amount of dollars awarded or committed to DBE firms in order to meet the contract goals. This applies only to Race Conscious contracts.
- 19 (D). Provide the actual total DBE participation in dollars on the race conscious contracts completed this reporting period.
- 19 (E). Of all the contracts completed this reporting period using Race Conscious measures, calculate the percentage of DBE participation. Divide the total dollar amount to DBEs in item 19(D) by the total dollar value provided in 19(B) to derive this percentage. Round to the nearest tenth.
- 20 (A)–20(E). Items 21(A)–21(E) are derived in the same manner as items 19(A)–19(E), except these figures should be based on contracts completed using Race Neutral measures.
- 20 (C). This field is closed.
- 21 (A)–21(D). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.
- 21 (C). This field is closed.
- 21 (E). Calculate the overall percentage of dollars to DBEs on completed contracts. Divide the Total DBE participation dollar value in 21(D) by the Total Dollar Value of Contracts Completed in 21(B) to derive this percentage. Round to the nearest tenth.

23. Name of the Authorized Representative preparing this form.

24. Signature of the Authorized Representative.

25. Phone number of the Authorized Representative.

\*\*Submit your completed report to your Regional or Division Office.

**UNIFORM REPORT OF DBE COMMITMENTS/AWARDS AND PAYMENTS**

*Applicants refer to the instructions about the directions on filling out this form.*

1. [ ] FHWAA [ ] FAA [ ] PTA Recipient ID Number

2. [ ] DBE Goal

3. [ ] DBE Goal

4. [ ] DBE Goal

5. [ ] DBE Goal

6. [ ] DBE Goal

7. [ ] DBE Goal

8. [ ] DBE Goal

9. [ ] DBE Goal

10. [ ] DBE Goal

11. [ ] DBE Goal

12. [ ] DBE Goal

13. [ ] DBE Goal

14. [ ] DBE Goal

15. [ ] DBE Goal

16. [ ] DBE Goal

17. [ ] DBE Goal

18. [ ] DBE Goal

19. [ ] DBE Goal

20. [ ] DBE Goal

21. [ ] DBE Goal

22. [ ] DBE Goal

23. [ ] DBE Goal

24. [ ] DBE Goal

25. [ ] DBE Goal

**Awards/Commitments this Reporting Period**

	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
A									
B									
C									
D									
E									
F									
G									
H									
I									

**BREAKDOWN BY ETHNICITY & GENDER**

	Contracts Awarded to DBEs this Period		
	A	B	C
	Total to DBE (dollar amount)	Men	Women
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

**Payments Made this Period**

	A	B	C	D	E	F
	Total Number of Contracts	Total Dollars Paid	Total Number of Contracts with DBEs	Total Payments to DBE firms	Total Number of DBE firms Paid	Percent to DBEs
A						
B						
C						
D						
E						
F						

**TOTAL PAYMENTS ON CONTRACTS COMPLETED THIS REPORTING PERIOD**

	A	B	C	D	E	F
	Number of Contracts Completed	Total Dollar Value of Contracts Completed	DBE Participation Needed to Meet Goal (Dollars)	Total DSE Participation (Dollars)	Total DSE Participation (Number)	Percent to DBEs
A						
B						
C						
D						
E						
F						

24. Signature: \_\_\_\_\_ 25. Phone Number: \_\_\_\_\_



[79 FR 59601, Oct. 2, 2014]

## 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**



Appendix F

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

***Roadmap for Applicants***

**1. Should I apply?**

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

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

**2. How do I apply?**

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

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

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

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

**5. Where can I find more information?**

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

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

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

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



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

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

**Section 1: CERTIFICATION INFORMATION**

**A. Basic Contact Information**

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

**B. Prior/Other Certifications and Applications**

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

**Section 2: GENERAL INFORMATION**

**A. Business profile:**

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

- (2) If you know the appropriate NAICS Code for the line(s) of work you identified in your business profile, enter the codes in the space provided.

- (3) State the date on which your firm was established as stated in your firm's Articles of Incorporation or charter.

- (4) State the date each person became a firm owner.

- (5) Check the appropriate box describing the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

- (6) Check the appropriate box that indicates whether your firm is "for profit." If you checked "No," then you do NOT qualify for the DBE/ACDBE program and should not complete this application. All participating firms must be for-profit enterprises. If the firm is a for-profit enterprise, provide the Federal Tax ID number as stated on your firm's Federal tax return.

- (7) Check the appropriate box that describes the type of legal business structure of your firm, as indicated in your firm's Articles of Incorporation or similar document. Identify all joint venture partners, if applicable. If you checked "Other," briefly explain in the space provided.

- (8) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.

- (9) Specify the firm's gross receipts for each of the past three years, as stated in your firm's filed Federal tax returns. You must submit complete copies of the firm's Federal tax returns for each year. If there are any affiliates or subsidiaries of the applicant firm or owners, you must provide these firms' gross receipts and submit complete copies of these firms' Federal tax returns. Affiliation is defined in 49 C.F.R. §26.5 and 13 C.F.R. Part 121.

**B. Relationships and Dealings with Other Businesses**

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





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

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

#### Section 3: MAJORITY OWNER INFORMATION

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

- A. Identify the majority owner of the firm holding 51% or more ownership interest
  - (1) Enter the full name of the owner.
  - (2) Enter his/her title or position within your firm.
  - (3) Give his/her home phone number.
  - (4) Enter his/her home (street) address.
  - (5) Indicate this owner's gender.
  - (6) Identify the owner's ethnic group membership. If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
  - (7) Check the appropriate box to indicate whether this owner is a U.S. citizen or a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner.
  - (8) Enter the number of years during which this owner has been an owner of your firm.
  - (9) Indicate the percentage of the total ownership this person holds and the date acquired, including (if appropriate), the class of stock owned.
  - (10) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment. Describe how you acquired your business and attach documentation substantiating this investment.
- B. Additional Owner Information
  - (1) Describe the familial relationship of this owner to each other owner of your firm and employees.
  - (2) Indicate whether this owner performs a management or supervisory function for any other business. If you

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

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

#### Section 4: CONTROL

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



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

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

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

**C. Inventory: Indicate firm inventory in these categories:**

**(1) Equipment and Vehicles**

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

**(2) Office Space**

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

**(3) Storage Space**

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

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

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

**E. Financial / Banking Information**

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

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

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

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

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

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

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

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

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

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

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

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

**AIRPORT CONCESSION/ACDBE APPLICANTS**

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

**AFFIDAVIT & SIGNATURE**

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



Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

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

(3) Phone #: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ (4) Other Phone #: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_ (5) Fax #: (\_\_\_\_) \_\_\_\_\_ - \_\_\_\_\_

(6) E-mail: \_\_\_\_\_ (7) Firm Websites: \_\_\_\_\_

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

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

B. Prior/Other Certifications and Applications

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

DBE  ACDBE Names of certifying agencies: \_\_\_\_\_

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

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

Date \_\_\_/\_\_\_/\_\_\_ State/UCP Member: \_\_\_\_\_ Date \_\_\_/\_\_\_/\_\_\_ State/UCP Member: \_\_\_\_\_

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

- (a) Denied certification or decertified as a DBE, ACDBE, 8(a), SDB, MBE/WBE firm?  Yes  No
- (b) Withdrawn an application for these programs, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity?  Yes  No

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

\_\_\_\_\_

Section 2: GENERAL INFORMATION

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

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

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

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

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

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



(6) Is your firm "for profit"?  Yes  No → **STOP!** If your firm is NOT for-profit, then you do NOT qualify for this program and should not fill out this application.  
 Federal Tax ID# \_\_\_\_\_

(7) Type of Legal Business Structure: (check all that apply):  
 Sole Proprietorship       Limited Liability Partnership  
 Partnership               Corporation  
 Limited Liability Company     Joint Venture (Identify all JV partners \_\_\_\_\_)  
 Applying as an ACDBE       Other, Describe \_\_\_\_\_

(8) Number of employees: Full-time \_\_\_\_\_ Part-time \_\_\_\_\_ Seasonal \_\_\_\_\_ Total \_\_\_\_\_  
 (Provide a list of employees, their job titles, and dates of employment, to your application).

(9) Specify the firm's gross receipts for the last 3 years. (Submit complete copies of the firm's Federal tax returns for each year. If there are affiliates or subsidiaries of the applicant firm or owners, you must submit complete copies of these firms' Federal tax returns).

Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____

**B. Relationships and Dealings 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 or storage space, yard, warehouse, facilities, equipment, inventory, financing, office staff, and/or employees with any other business, organization, or entity?  Yes  No  
 If Yes, explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or oral agreement. Also detail the items shared.

\_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_  
 \_\_\_\_\_

(2) Has any other firm had an ownership interest in your firm at present or at any time in the past?  
 Yes  No If Yes, explain \_\_\_\_\_

(3) At present, or at any time in the past, has your firm:  
 (a) Ever existed under different ownership, a different type of ownership, or a different name?  Yes  No  
 (b) Existed as a subsidiary of any other firm?  Yes  No  
 (c) Existed as a partnership in which one or more of the partners are/were other firms?  Yes  No  
 (d) Owned any percentage of any other firm?  Yes  No  
 (e) Had any subsidiaries?  Yes  No  
 (f) Served as a subcontractor with another firm constituting more than 25% of your firm's receipts?  Yes  No

(If you answered "Yes" to any of the questions in (2) and/or (3)(a)-(f), you may be asked to provide further details and explain whether the arrangement continues).



**Section 3: MAJORITY OWNER INFORMATION**

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

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

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

(5) Gender:  Male  Female

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

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

(7) U.S. Citizenship:

- U.S. Citizen
- Lawfully Admitted Permanent Resident

(8) Number of years as owner: \_\_\_\_\_

(9) Percentage owned: \_\_\_\_\_ %

Class of stock owned: \_\_\_\_\_  
 Date acquired \_\_\_\_\_

(10) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
	Cash	\$ _____
	Real Estate	\$ _____
	Equipment	\$ _____
	Other	\$ _____

Describe how you acquired your business:

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

(Attach documentation substantiating your investment)

**B. Additional Owner Information**

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

\_\_\_\_\_  
 \_\_\_\_\_

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

If Yes, identify: Name of Business: \_\_\_\_\_ Function/Title: \_\_\_\_\_

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

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

\_\_\_\_\_  
 \_\_\_\_\_

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

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

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

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

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



**Section 3: OWNER INFORMATION, Cont'd.**

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

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

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

(5) Gender:  Male  Female

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

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

(7) U.S. Citizenship:

- U.S. Citizen
- Lawfully Admitted Permanent Resident

(8) Number of years as owner: \_\_\_\_\_

(9) Percentage owned: \_\_\_\_\_ %  
 Class of stock owned: \_\_\_\_\_  
 Date acquired \_\_\_\_\_

(10) Initial investment to acquire ownership interest in firm:	Type	Dollar Value
	Cash	\$ _____
	Real Estate	\$ _____
	Equipment	\$ _____
	Other	\$ _____

Describe how you acquired your business:

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

(Attach documentation substantiating your investment)

**B. Additional Owner Information**

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

\_\_\_\_\_  
 \_\_\_\_\_

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

If Yes, identify: Name of Business: \_\_\_\_\_ Function/Title: \_\_\_\_\_

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

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

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

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

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

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

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



**Section 4: CONTROL**

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

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

**(3) Do any of the persons listed above perform a management or supervisory function for any other business?**  
 Yes  No If Yes, identify for each:

Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

Person: \_\_\_\_\_ Title: \_\_\_\_\_  
 Business: \_\_\_\_\_ Function: \_\_\_\_\_

**(4) Do any of the persons listed in section A above own or work for any other firm(s) that has a relationship with this firm?** (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)  
 Yes  No If Yes, identify for each:

Firm Name: \_\_\_\_\_ Person: \_\_\_\_\_  
 Nature of Business Relationship: \_\_\_\_\_

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

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

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

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

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

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

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

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

**1. Equipment and Vehicles**

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

**2. Office Space**

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





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

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

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

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

Name of bank: \_\_\_\_\_ City and State: \_\_\_\_\_  
 The following individuals are able to sign checks on this account: \_\_\_\_\_

Name of bank: \_\_\_\_\_ City and State: \_\_\_\_\_  
 The following individuals are able to sign checks on this account: \_\_\_\_\_

**Bonding Information:** If you have bonding capacity, identify the firm's bonding aggregate and project limits:  
 Aggregate limit \$ \_\_\_\_\_ Project limit \$ \_\_\_\_\_

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

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

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

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

**H. List current licenses/permits held by any owner and/or employee of your firm** (e.g. contractor, engineer, architect, etc.) (Attach additional sheets if needed):

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



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

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

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

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

**AIRPORT CONCESSION (ACDBE) APPLICANTS ONLY MUST COMPLETE THIS SECTION**

Identify the following information concerning the ACDBE applicant firm:

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

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

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



### AFFIDAVIT OF CERTIFICATION

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

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

I \_\_\_\_\_ (full name printed),  
swear or affirm under penalty of law that I am  
\_\_\_\_\_ (title) of the applicant firm  
\_\_\_\_\_ and that I

have read and understood all of the questions in this application and that all of the foregoing information and statements submitted in this application and its attachments and supporting documents are true and correct to the best of my knowledge, and that all responses to the questions are full and complete, omitting no material information. The responses include all material information necessary to fully and accurately identify and explain the operations, capabilities and pertinent history of the named firm as well as the ownership, control, and affiliations thereof.

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

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

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

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

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

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

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

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

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

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

Signature \_\_\_\_\_ (Date) \_\_\_\_\_  
(DBE/ACDBE Applicant)

#### NOTARY CERTIFICATE



## UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

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

### Required Documents for All Applicants

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

### Partnership or Joint Venture

- Original and any amended Partnership or Joint Venture Agreements

### Corporation or LLC

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

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

### Optional Documents to Be Provided on Request

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

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

### Suppliers

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

[79 FR 59603, Oct. 2, 2014]

## **Appendix G to Part 26—Personal Net Worth Statement**



Section 3. Brokerage and custodial accounts, stocks, bonds, retirement accounts. (Full Value) (Use attachments if necessary).				
Name of Security / Brokerage Account / Retirement Account	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned (Including Primary Residence, Investment Properties, Personal Property Leased or Rented for Business Purposes, Farm Properties, or any Other Income Producing property). (List each parcel separately. Add additional sheets if necessary).			
	Primary Residence	Property B	Property C
Type of Property			
Address			
Date Acquired and Method of Acquisition (purchase, inherit, divorce, gift, etc.)			
Names on Deed			
Purchase Price			
Present Market Value			
Source of Market Valuation			
Name of all Mortgage Holders			
Mortgage Acc. # and balance (as of date of form)			
Equity line of credit balance			
Amount of Payment Per Month/Year (Specify)			

Section 5. Life Insurance Held (Give face amount and cash surrender value of policies, name of insurance company and beneficiaries).				
Insurance Company	Face Value	Cash Surrender Amount	Beneficiaries	Loan on Policy Information



Section 6. Other Personal Property and Assets (Use attachments as necessary)				
Type of Property or Asset	Total Present Value	Amount of Liability (Balance)	Is this asset insured?	Lien or Note amount and Terms of Payment
Automobiles and Vehicles (including recreation vehicles, motorcycles, boats, etc.) Include personally owned vehicles that are leased or rented to businesses or other individuals.				
Household Goods / Jewelry				
Other (List)				
Accounts and Notes Receivables				

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

**Section 8. Other Liabilities and Unpaid Taxes (Describe)**

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

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

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

Signature (DBE/ACDBE Owner) \_\_\_\_\_ Date \_\_\_\_\_

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



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

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

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

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

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

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

#### Assets

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

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

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

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

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

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

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

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

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

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

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

### Liabilities

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

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

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

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

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

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

### Transfers of Assets:

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

### Affidavit

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

[79 FR 59617, Oct. 2, 2014]