

## POLICY STATEMENT

### **Section 26.1, 26.23 Objectives/Policy Statement**

The Georgia Department of Transportation (GDOT), has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the U.S. Department of Transportation (USDOT), 49 CFR Part 26. GDOT has received Federal financial assistance from the Department of Transportation, and as a condition of receiving this assistance, GDOT has signed an assurance that it will comply with 49 CFR Part 26 (hereafter referred to as "Part 26").

It is the policy of GDOT to ensure that DBEs as defined in Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also GDOT's policy to engage in the following actions on a continuing basis:

1. Ensure nondiscrimination in the award and administration of USDOT- assisted contracts;
2. Create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
3. Ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. Ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. Help remove barriers to the participation of DBEs in USDOT assisted contracts;
6. Promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. Assist the development of firms that can compete successfully in the market place outside the DBE Program; and
8. Make appropriate use of the flexibility afforded to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

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

GDOT has disseminated this policy statement to the Aviation Program Office / Division of Intermodal Programs and all of the components of our organization. This statement has been distributed to DBE and non-DBE business communities that may perform work on GDOT USDOT-assisted contracts. The distribution was accomplished by

1. This Policy Statement will be prepared as a handout, and made available at pre-bid conference, and / or outreach meetings conducted by GDOT where there may be aviation project participation activity available.
2. Copies of the Policy Statement will be provided to all of the agencies / organizations consulted during the development of the DBE goal methodology. This helps to make GDOT's policy available to additional small, minority, and women business development agencies.

  
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Kimberly A. King, Office of Equal Opportunity Director

  
\_\_\_\_\_  
Date

## **GENERAL REQUIREMENTS**

### **Section 26.1 Objectives**

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

### **Section 26.3 Applicability**

GDOT is the recipient of Federal airport funds authorized by 49 U.S.C. 47101, *et seq.*

### **Section 26.5 Definitions**

GDOT will use terms in this program that have their meanings defined below.

DBE:	Disadvantaged Business Enterprise
DBELO:	DBE Liaison Officer
USDOT:	United States Department of Transportation
FAA:	Federal Aviation Administration
AIP:	Airport Improvement Program. This is a grant-in-aid program funded under the USDOT Aviation Trust Fund and administered by the FAA.
Goal:	A defined objective to be established each year based on the forecasted DBE participation. These goals vary according to the disciplines of work to be funded under AIP.

### **Section 26.7 Non-discrimination Requirements**

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

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

### **Section 26.11 Record Keeping Requirements**

#### **Reporting to USDOT**

GDOT maintains a bidders list that consists of relevant information about all DBE and non-DBE firms that bid or quote on USDOT-assisted contracts. The list includes the name and address of the firm, its status as a DBE or non-DBE, the age of the firm and its annual gross receipts by brackets. This information is collected from all prime

bidders of all firms submitting quotes on subcontracts. The list provides data, as accurate as possible, about the universe of DBE and non-DBE contractors and subcontractors who seek to work on or are otherwise available to work on GDOT's-USDOT-assisted contracts. The list is then used in helping to set the Agency's overall goals.

DBE participation will be reported to USDOT / FAA as follows:

GDOT will transmit to FAA annually, by or before December 1, the information required for the "Uniform Report of DBE Awards or Commitments and Payments", as described in Appendix B to Part 26. GDOT will similarly report the required information about participating DBE firms. All reporting will be done through the Uniform Report of DBE Awards or Commitments and Payments official reporting system, or another format acceptable to the FAA as instructed thereby.

### Bidders List

GDOT will create and maintain a bidders list. The purpose of the list is to provide as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on GDOT's USDOT-assisted contracts, for use in helping to set overall goals. The bidders list will include the name, address, DBE and non-DBE status, age of firm, and annual gross receipts of firms.

This information will be collected in the following way(s):

1. Include a contract clause requiring prime bidders to report the names/addresses, and possibly other information, of all firms who quote to them on subcontracts.
2. Include a notice in all solicitations, and otherwise widely disseminated, request to firms quoting on subcontracts to report the approved information directory to GDOT's DBELO for inclusion in the bidder's list.
3. Request the above information from all potential bidders who contact GDOT seeking bid information, and/or who attend pre-bid meetings, conferences, etc.

### Records retention and reporting:

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

GDOT, as administrator of the Georgia Unified Certification Program (UCP) established pursuant to §26.81, will report to the Department of Transportation's Office of Civil Rights each year 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.

### **Section 26.13 Federal Financial Assistance Agreement**

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

Assurance: - Each financial assistance agreement GDOT signs with a USDOT operating administration (or a primary recipient) will include the following assurance:

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

Contract Assurance: GDOT will ensure that the following clause is included in each USDOT-funded contract it signs with a contractor (and each subcontract the prime contractor signs with a subcontractor):

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

### **ADMINISTRATIVE REQUIREMENTS**

#### **Section 26.21 DBE Program Updates**

GDOT is required to have a DBE program meeting the requirements of this part as it will receive grants for airport planning or development and will award prime contracts, cumulative total value of which exceeds \$250,000 in FAA funds in a federal fiscal year. GDOT is not eligible to receive USDOT financial assistance unless USDOT has approved this DBE program and GDOT is in compliance with it and Part 26. GDOT will continue to carry out this program until all funds from USDOT financial assistance have been expended. GDOT does not have to submit regular updates of the DBE program document, as long as it remains in compliance. However, significant changes in the program, including those required by regulatory updates, will be submitted for USDOT approval.

#### **Section 26.23 Policy Statement**

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

#### **Section 26.25 DBE Liaison Officer (DBELO)**

The following individual has been designated as the DBE Liaison Officer for GDOT:

*Kimberly A. King, Director  
Office of Equal Opportunity  
Georgia Department of Transportation  
600 W. Peachtree St. NW, 7<sup>th</sup> Floor, Atlanta, GA 30308*

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

The DBELO is responsible for developing, implementing and monitoring the DBE program, in coordination with other appropriate officials. The duties and responsibilities include the following:

1. Gathers and reports statistical data and other information as required by USDOT.
2. Reviews third party contracts and purchase requisitions for compliance with this program.
3. Works with all departments to set overall annual goals.

4. Ensures that bid notices and requests for proposals are available to DBEs in a timely manner.
5. Identifies contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals) and monitors results.
6. Analyzes GDOT's progress toward attainment and identifies ways to improve progress.
7. Participates in pre-bid meetings.
8. Advises the Commissioner/governing body on DBE matters and achievement.
9. Provides staff support to the Equal Access Committee.
10. Determine contractor compliance with good faith efforts.
11. Provides DBEs with information and assistance in preparing bids, obtaining bonding and insurance.
12. Plans and participates in DBE training seminars.
13. Administers the Unified Certification Process in Georgia.
14. Provides outreach to DBEs and community organizations to advise them of opportunities.
15. Maintains the agency's updated directory on certified DBEs.

#### **Section 26.27 DBE Financial Institutions**

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

Specifically, GDOT has identified Citizens Trust Bank, 75 Piedmont Ave., Atlanta, GA 30303; Carver State Bank, 701 Martin Luther King, Jr. Boulevard, P.O. Box 2769, Savannah, GA 31402; Quantum Trust Bank, 505 Peachtree Industrial Blvd, Suwanee, GA 30024; State Bank of Georgia, 131 Gingercake Road, Fayetteville, Georgia 30214; First Intercontinental Bank, 5593 Buford Hwy NE, Doraville, GA 30340; Metro City Bank 5441 Buford Highway, Ste. 109, Doraville, GA 30340; Noa Bank, 2385 Pleasant Hill Road, Duluth, GA 30096; and Touchmark Bank, 3651 Old Milton Pkwy, Alpharetta, GA 30005 as minority-owned banking institutions. GDOT will consider the services offered by these banks and refer the institutions noted above.

#### **Section 26.29 Prompt Payment Mechanisms**

GDOT requires that all subcontractors performing work on USDOT-assisted contracts shall be promptly paid for work performed pursuant to their agreements, in accordance with all relevant federal, state, and local law.

In accordance with 49 CFR §26.29, GDOT established a contract clause implementing this requirement and requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 10 days from the prime contractor's receipt of each payment from GDOT.

GDOT ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. Pursuant to §26.29, GDOT has selected the following method to comply with this requirement:

GDOT declines to hold retainage from prime contractors and prohibits prime contractors from holding retainage from subcontractors.

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

Additionally, for Federal Aviation Administration (FAA) Recipients include the following:

To implement this measure, GDOT includes the following clause from FAA Advisory Circular 150/5370-10 in each USDOT-assisted prime construction contract:

GDOT includes the following Special Provision in all contracts:

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



Additional mechanisms GDOT uses to ensure prompt payment, include providing the payment and performance bond information of the Prime Contractor to the party due payment. GDOT provides the surety's name, address, and telephone number with guidance to file the complaint in timely manner to avoid relinquishing the right to file the claim.

### **Section 26.31      Directory**

The primary Disadvantaged Business Enterprise Directory for GDOT comes from the GDOT Equal Employment Opportunity Division and contains listings of certified minority- and women- owned construction firms and material suppliers throughout the State of Georgia.

GDOT maintains active lists of certified disadvantaged businesses located throughout the state and around the country. Therefore, all of the firms listed in the directory have been certified by this state and in accordance with USDOT criteria. It should be noted also that these listings and certifications are periodically updated with some firms being added at the time of certification or removed, if the firm is no longer eligible for certification..

The directory enables prime contractors for GDOT projects to proceed more easily in their attempts to identify and make contact with DBE firms to comply with overall goals regarding Disadvantaged Business Enterprise project participation.

GDOT will retain a copy of the GDOT DBE Directory, identifying firms that have been certified as eligible to participate as DBEs on federally funded projects. This directory lists the firm's name, address, phone number, date of most recent certification, North American Industry Classification System (NAICS) code, and the type of work the firm has been certified to perform as a DBE. The Directory is updated on a monthly basis. Sample pages can be found in Attachment 3 of this program. GDOT will make the GDOT directory available via:

<https://www.dot.ga.gov/GDOT/Pages/DBE.aspx>

### **Section 26.33      Over-concentration**

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



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

1. Enable rule (49 CFR 26.55), One for One counting of DBE Hauling to address the effects of over-concentration. The DBE may lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
2. Create a rule to vary the use of contract goals, to the extent consistent with §26.51. There is a continuing concern in the program that if Prime Contractors are able to meet DBE goals readily by doing nothing more than obtaining DBE participation through trucking firms, the Prime Contractors will be less likely to hire DBE subcontractors for other purposes. The Department's contract goals must provide for participation by all certified DBEs, and must not be subdivided into group-specific goals. Therefore, to encourage Prime Contractors to diversify the work categories subcontracted to DBE firms, the Georgia USDOT proposes to credit or count trucking / hauling toward the DBE goal at reduced percentages. The percentage allowed would be established in increments. Fiscal year 2017 would be 80%, fiscal year 2018 would be 70%, and fiscal year 2019 would be 60%.

Enable use of Joint-checks for material purchases in the DBE Program through a Joint Check Approval policy. To further encourage Prime Contractor's to do business with other firms beyond Trucking, the Department wishes to permit the use of joint checks toward meeting the Contract DBE Goals. A joint-check is a check issued by a prime contractor to a DBE subcontractor and to a material supplier or another third party for items or services to be incorporated into a project. Whereas, the DBE rule does not prohibit prime contractors and subcontractors from using joint checks, and whereas, this practice is a commonly-recognized way of doing business, the State of Georgia Standard Specifications, Construction of Transportation Systems, Section 108.01 Subletting of Contract, provides for the purchase of materials by the Prime Contractor for use by a Subcontractor. The Department will require prime contractors and DBEs wishing to use joint-check arrangements to obtain prior approval from the Georgia DOT. Prior to approval, a written joint-check agreement among the parties (including the suppliers concerned) providing full and prompt disclosure of the expected use of joint checks will be required. The prime contractor will not be allowed to make payment directly to the supplier. The DBE will release the check to the supplier. Current Georgia DOT standard operating procedures have a well-established monitoring Commercial Useful Function inspection process having oversight mechanisms such as review of invoices, and cancelled checks.

### **Section 26.35 Business Development Programs**

GDOT has solicited federally and state funded supportive services contracts that will include a Business Development Program aspect as identified in the Code of Federal Regulations.

### **Section 26.37 Monitoring Responsibilities**

GDOT implements and carries out appropriate mechanisms to ensure compliance with 49 CFR Part 26 program requirements by all program participants, including prompt payment, and describes and set forth these mechanisms in GDOT's DBE program.

GDOT actively monitors participation by maintaining a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments.

#### Monitoring Payments to DBEs and Non-DBEs

GDOT undertakes ongoing monitoring of prime payments to subcontractors over the course of any covered contract. Such monitoring activities will be accomplished through the following method(s):

- *GDOT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.*

GDOT requires prime contractors to maintain records and documents of payments to subcontractors, including DBEs, for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for GDOT's financial assistance agreement, whichever is longer. These records will be made available for inspection upon request by any authorized representative of GDOT or USDOT. This reporting requirement extends to all subcontractors, both DBE and non-DBE.

- GDOT proactively reviews contract payments to subcontractors including DBEs monthly. Payment reviews will evaluate whether the actual amount paid to DBE subcontractors is equivalent to the amounts reported to GDOT by the prime contractor.

#### Prompt Payment Dispute Resolution

GDOT will take the following steps to resolve disputes as to whether work has been satisfactorily completed for purposes of §26.29.

The DBELO or another authorized EGE representative will conduct meetings between the prime and sub and act as a mediator. As the mediator, the DBELO

or authorized representative will have the authority to take enforcement actions as necessary.

GDOT has established, as part of its DBE program, the following mechanism(s) to ensure prompt payment and return of:

(1) Alternative dispute resolution (ADR): A contract clause will be added to each contract that requires the prime contractor to submit a detailed alternative dispute resolution plan for GDOT approval prior to the issuance of any notice to proceed.

#### Prompt Payment Complaints

Complaints by subcontractors regarding the prompt payment requirements are handled according to the following procedure.

- Once the subcontractor has made every effort to resolve the issue with the prime, subcontractor should contact DBELO to initiate a complaint.
- The subcontractor should be proactive and make their own claim for payment pursuant to C.R.S. 38-26-107, and the County shall follow the process set forth in said statute with respect to the claim.
- The DBELO will work with the prime to resolve the complaint, and will use the enforcement mechanisms outlined in Attachment 7 if necessary.
- If filing a prompt payment complaint with the DBELO does not result in timely and meaningful action by GDOT to resolve prompt payment disputes, affected subcontractor may contact the responsible FAA contact.
- Pursuant to Sec. 157 of the FAA Reauthorization Act of 2018, all complaints related to prompt payment will be reported in a format acceptable to the FAA, including the nature and origin of the complaint and its resolution.

#### Enforcement Actions for Noncompliance of Participants

GDOT will provide appropriate means to enforce the requirements of §26.29. These means include:

- 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 GDOT deems appropriate, which may include withholding from retainage amounts claimed by subcontractors in accordance with C.R.S. 38-26-107.

GDOT will actively implement the enforcement actions detailed above.

### Monitoring Contracts and Work Sites

GDOT reviews contracting records and engages in active monitoring of work sites 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. Work site monitoring is performed by *DBELO*. Contracting records are reviewed by *DBELO*. GDOT will maintain written certification that contracting records have been reviewed and work sites have been monitored for this purpose.

### **Section 26.39 Fostering small business participation**

GDOT has created a Small Business 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.

The small business element is incorporated as Attachment 9 to this DBE Program. The program elements will be actively implemented to foster small business participation.

## **SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING**

### **Section 26.43 Set-asides or Quotas**

GDOT does not use quotas in any way in the administration of this DBE program.

### **Section 26.45 Overall Goals**

GDOT will establish an overall DBE goal covering a three-year federal fiscal year period if it anticipates awarding DOT-funded prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any one or more of the reporting fiscal years within the three-year goal period. In accordance with §26.45(f), GDOT will submit its Overall Three-year DBE Goal to FAA by August 1<sup>st</sup> of the year in which the goal is due, as required by the schedule established by and posted to the website of FAA.

*Link to appropriate operating administration website:*

FAA:

[https://www.faa.gov/about/office org/headquarters offices/air cr/bus ent program/media/Schedule of DBE and ACDBE Reporting Requirements Dec 2017 Issue.pdf](https://www.faa.gov/about/office%20org/headquarters%20offices/air%20cr/business%20program/media/Schedule%20of%20DBE%20and%20ACDBE%20Reporting%20Requirements%20Dec%202017%20Issue.pdf)

The DBE goals will be established in accordance with the 2-step process as specified in 49 CFR Part 26.45. If GDOT does not anticipate awarding prime contracts the cumulative total value of which exceeds \$250,000 in DOT funds during any of the years within the three-year reporting period, an overall goal will not be developed. However, this DBE Program will remain in effect and GDOT will seek to fulfill the objectives outlined in 49 CFR Part 26.1.

Step 1. The first step is to determine a base figure for the relative availability of DBEs in the market area. GDOT will use one of the following as a method to determine the base figure: *a Bidders List, a Disparity Study, the goal of another USDOT recipient, DBE Directory information and Census Bureau Data, or other alternative method that complies with §26.45.* GDOT understands that the exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of 49 CFR Part 26.45(c)(2), is not an acceptable alternative means of determining the availability of DBEs.

Step 2. The second step is to adjust, if necessary, the “base figure” percentage from Step 1 so that it reflects as accurately as possible the DBE participation the recipient would expect in the absence of discrimination. Adjustments may be made based on past participation, information from a disparity study (to the extent it is not already accounted for in the base goal), and/or information about barriers to entry to past competitiveness of DBEs on contracts. GDOT will examine all of the evidence available in its jurisdiction to determine what adjustment, if any, is needed. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

Any methodology selected will 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 the GDOT market.

In establishing the overall goal, GDOT will provide for consultation and publication. This includes 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 the efforts by GDOT to establish a level playing field for the participation of DBEs. The consultation will 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 will occur before GDOT is required to submit the goal methodology to the operating administration for review pursuant to §26.45(f). The goal submission will document the consultation process in which GDOT engaged. Notwithstanding paragraph (f)(4) of §26.45, the proposed goal will not be implemented until this requirement is met.

In addition to the consultation described above, GDOT will publish a notice announcing the proposed overall goal before submission to the FAA on August 1st. The notice will be posted on GDOT’s official internet web site and may be posted in other sources (e.g., minority-focused media, trade association publications). If the proposed goal

changes following review by FAA, the revised goal will be posted on the official internet web site.

The Overall Three-Year DBE Goal submission to FAA will include a summary of information and comments received, if any, during this public participation process and GDOT responses.

GDOT will begin using the overall goal on October 1 of the relevant period, unless other instructions from FAA have been received.

### Project Goals

If permitted or required by the FAA Administrator, an overall goal may be expressed 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. A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals. A project goal covers the entire length of the project to which it applies. The project goal will include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal. The funds for the project to which the project goal pertains are separated from the base from which the regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

If a goal is established on a project basis, the goal will be used by the time of the first solicitation for a USDOT-assisted contract for the project.

### Prior Operating Administration Concurrence

GDOT understands that prior FAA concurrence with the overall goal is not required. However, if the FAA review suggests that the overall goal has not been correctly calculated or that the method employed by GDOT for calculating goals is inadequate, FAA may, after consulting with GDOT, adjust the overall goal or require that the goal be adjusted by GDOT. The adjusted overall goal is binding. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the U.S. DOT operating administration will be guided by the goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

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

A description of the methodology to calculate the overall goal and the goal calculations can be found in Attachment 4 to this program. This section of the program will be updated every 3 years.



## **Section 26.47 Failure to meet overall goals**

GDOT cannot be penalized, or treated by the Department as being in noncompliance with Part 26, because DBE participation falls short of an overall goal, unless GDOT fails to administer its DBE program in good faith.

GDOT understands that to be considered to be in compliance with this part, an approved DBE Program and overall DBE goal, if applicable, must be maintained, and this DBE Program must be administered in good faith.

GDOT understands that if the awards and commitments shown on the Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, the following actions must be taken in order to be regarded by the Department as implementing this DBE Program in good faith:

- (1) Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
- (2) Establish specific steps and milestones to correct the problems identified in the analysis to enable the goal for the new fiscal year to be fully met;
- (3) GDOT will prepare, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraph (c)(1) and (2) of this section. We will retain copy of analysis and corrective actions in records for a minimum of three years, and will make it available to FAA upon request.

## **Section 26.51 Means Recipients Use to Meet Overall Goals**

### **Breakout of Estimated Race-Neutral & Race-Conscious Participation**

GDOT will meet the maximum feasible portion of its 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.

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.
- (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 the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

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

The breakout of estimated race-neutral and race-conscious participation can be found in Attachment 4 to this program.

GDOT will arrange 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.

### Contract Goals

If the approved projection under paragraph (c) of §26.51 estimates that the entire overall goal for a given year can be met through race-neutral means, contract goals will not be set during that year, unless the use of contract goals becomes necessary in order meet the overall goal.

Contract goals will be established only on those USDOT-assisted contracts that have subcontracting possibilities. A contract goal need not be established on every such contract, and the size of contract goals will be adapted to the circumstances of each

such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work).

Contract goals will be expressed as a percentage of *the Federal share of a USDOT-assisted contract*.

### **Section 26.53 Good Faith Efforts Procedures**

#### Demonstration of good faith efforts (pre-award)

In cases where a contract goal has been established, the contract in question will only be awarded to a bidder/offeror that has made good faith efforts to meet the contract goal. The bidder/offeror can demonstrate that it has made good faith efforts by either meeting the contract goal or documenting that it has made adequate good faith efforts to do so. Examples of good faith efforts are found in Appendix A to Part 26.

GDOT is responsible for determining whether a bidder/offeror who has not met the contract goal has documented sufficient good faith efforts to be regarded as responsive.

GDOT will ensure that all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing to the performance of the contract by the bidder/offeror.

In all solicitations for USDOT-assisted contracts for which a contract goal has been established, the following information will be required of every bidder/offeror:

- (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 (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 (as elaborated in Appendix A of Part 26). 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) The bidder/offeror will be required to present the information stipulated in paragraph (2) of this section:
- (4) Under sealed bid procedures, as a matter of **responsiveness**, or with initial proposals, under contract negotiation procedures;

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 (2) of this section before the final selection for the contract is made by the recipient.

#### Administrative reconsideration

Within 10 days of being informed by GDOT that it is not responsive because it has not documented adequate good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official:

Mike Dover P.E., Deputy Commissioner  
Georgia Department of Transportation  
600 W. Peachtree St. NW, Atlanta, GA 30308  
Phone: (404) 631-1021

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

As part of this reconsideration, the bidder/offeror will have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. The bidder/offeror will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether the goal was met or the bidder/offeror made adequate good faith efforts to do. The bidder/offeror will be sent a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

#### Good Faith Efforts procedural requirements (post-solicitation)

GDOT will include in each prime contract a provision stating:

The awarded contractor will be required to make available upon request a copy of all DBE subcontracts. The contractor shall ensure that all subcontracts or agreements with DBEs to supply labor or materials include all required contract provisions and mandate that the subcontractor and all lower tier subcontractors perform in accordance with the provisions of Part 26.

Prime contractors will be prohibited from terminating a DBE subcontractor listed in response to a covered solicitation (or an approved substitute DBE firm) without the prior written consent of GDOT. 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 another DBE firm.

Such written consent will be provided only if GDOT agrees, for reasons stated in the concurrence document, that the prime contractor has good cause to terminate the DBE firm. For purposes of this paragraph, good cause includes the following circumstances:

- (1) The listed DBE subcontractor fails or refuses to execute a written contract;
- (2) 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;
- (3) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, non-discriminatory bond requirements.
- (4) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
- (5) 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;
- (6) GDOT determined that the listed DBE subcontractor is not a responsible contractor;
- (7) The listed DBE subcontractor voluntarily withdraws from the project and provides GDOT written notice of its withdrawal;
- (8) The listed DBE is ineligible to receive DBE credit for the type of work required;
- (9) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
- (10) Other documented good cause that GDOT has determined 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.

Before transmitting to GDOT a 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 GDOT, of its intent to request to terminate and/or substitute the DBE, and the reason(s) for the request.

The prime contractor must give the DBE five days to respond to the prime contractor's notice and advise GDOT and the prime contractor of the reasons, if any, why the DBE objects to the proposed termination of its subcontract and why the prime contractor's

action should not be approved. If required in a particular case as a matter of public necessity (e.g., safety), a response period shorter than five days may be provided.

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

Each prime contract will include a provision stating:

The contractor shall utilize the specific DBEs listed in the contractor's *bid/solicitation* response to perform the work and supply the materials for which each is listed unless the contractor obtains prior written consent of GDOT as provided in 49 CFR Part 26, §26.53(f). Unless such consent is provided, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

GDOT will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE. 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 that was established for the procurement. The good faith efforts shall be documented by the contractor. If GDOT requests documentation from the contractor 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. GDOT shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

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

Sample Bid Specification:

The requirements of 49 CFR Part 26, Regulations of the U.S. Department of Transportation, apply to this contract. It is the policy of GDOT to practice nondiscrimination based on race, color, sex, or national origin in the award or performance of this contract. All firms qualifying under this solicitation are encouraged to submit bids/proposals. Award of this contract will be conditioned upon satisfying the requirements of this bid specification. These requirements apply to all bidders/offerors, including those who qualify as a DBE. A DBE contract goal of 4.70 percent has been established for this contract. The bidder/offeror shall make good faith efforts, as defined in Appendix A, 49 CFR Part 26 (attachment 1), to meet the contract goal for DBE participation in the performance of this contract.

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

### **Section 26.55      Counting DBE Participation**

GDOT will count DBE participation toward overall and contract goals as provided in 49 CFR 26.55. The participation of a DBE subcontractor will not be counted 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.

In the case of post-award substitutions or additions, if a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, the firm's participation will not be counted toward any DBE goals, except as provided for in §26.87(j).

Pursuant to Sec. 150 of the FAA Reauthorization Act of 2018, firms that exceed the business size standard in § 26.65(b) will remain eligible for DBE certification and credit on FAA-funded projects as long as they do not exceed the small business size standard, as adjusted by the United States Small Business Administration, for the NAICS code(s) in which they are certified.

## **SUBPART D – CERTIFICATION STANDARDS**

### **Section 26.61 – 26.73      Certification Process**

GDOT will use the certification standards of Subpart D of Part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. The Equal Opportunity Division makes all certification decisions based on the facts as a whole.

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

Georgia Department of Transportation  
Attn: Kimberly A. King, Director  
Office of Equal Employment Opportunity  
600 West Peachtree Street, N.W, 7th Floor  
Atlanta, Georgia 30308  
(404) 631-1972  
<http://www.dot.ga.gov/PS/Business/DBE>



The Uniform Certification Application form and documentation requirements are found in Attachment 7 to this program.

## **SUBPART E – CERTIFICATION PROCEDURES**

### **Section 26.81 Unified Certification Programs**

GDOT is the member of a Unified Certification Program (UCP) administered by GDOT's Equal Employment Opportunity Division. The UCP will meet all of the requirements of this section. Georgia's UCP program uses the certification standards of Subpart D of part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in USDOT/FAA-assisted contracts. Under the GDOT UCP Program, only GDOT and Atlanta's MARTA will conduct all DBE certifications. To be certified as a DBE, a firm must meet all certification eligibility standards. GDOT will refer all certifications to either of these two agencies. A link to GDOT's UCP Program can be found in Attachment 8.

### **Section 26.83 Procedures for Certification Decisions**

Only firms certified as eligible DBEs under §26.83 may participate as DBEs in this program. GDOT will take all required steps outlined in §26.83(c) in determining whether a DBE firm meets the standards of subpart D of Part 26.

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

DBEs will not be required to reapply for certification or undergo a recertification process. However, a certification review of a certified DBE firm may be conducted, including a new onsite 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 the attention of [Recipient] that leads to questions regarding the firm's eligibility, an on-site review may be conducted on an unannounced basis, at the firm's offices and job sites.

#### **"No Change" Affidavits and Notices of Change**

The UCP requires all DBEs owners to provide a written affidavit of any change in its circumstances affecting its ability to meet size, disadvantaged status, ownership, or control criteria of 49 CFR Part 26, or of any material changes in the information provided with the DBE firm's original application for certification.



The UCP also requires all DBE owners to submit every year, on the anniversary date of their certification, a “no change” affidavit meeting the requirements of §26.83(j). The text of this affidavit is the following:

I swear (or affirm) that there have been no changes in the circumstances of [*name of DBE firm*] affecting its ability to meet the size, disadvantaged status, ownership, or control requirements of 49 CFR Part 26. There have been no material changes in the information provided with [*name of DBE*]’s application for certification, except for any changes about which [*name of DBE firm*] has provided written notice to the [*Recipient*] pursuant to §26.83(i). [*Name of DBE firm*] meets Small Business Administration (SBA) criteria for being a small business concern and its average annual gross receipts (as defined by SBA rules) over the firm’s previous three fiscal years do not exceed \$23.98 million.

The GDOT Equal Employment Opportunity Division requires DBEs to submit documentation with this affidavit regarding the firm’s size and gross receipts.

The GDOT Equal Employment Opportunity Division will notify all currently certified DBE firms of these obligations prior to their renewal by mail. This notification will inform DBEs that to submit the “no change” affidavit, their owners must swear or affirm that they meet all regulatory requirements of Part 26, including personal net worth. The notification will likewise inform the DBE that if a firm’s owner knows or should know that he or she, or the firm, fails to meet a Part 26 eligibility requirement (e.g. personal net worth, business size), the obligation to submit a notice of change applies.

### **Section 26.85 Interstate Certification**

When a firm currently certified in its home state (“State A”) applies to a member of this State’s UCP (“State B”) for DBE certification, the UCP will follow the procedures defined in §26.85 [*specify §26.85(b) or (c) as appropriate*].

### **Section 26.86 Denials of Initial Requests for Certification**

If a currently certified DBE firm is decertified, or if an applicant firm’s initial application is denied, the affected firm may not reapply until twelve (12) months have passed from such action. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of §26.86 is received by the firm. If an applicant appeals this decision to the Department of Transportation pursuant to §26.89, such an appeal does not extend the waiting period.

### **Section 26.87 Removal of a DBE’s Eligibility**

In the event GDOT proposes to remove a DBE's certification, the procedures followed will be consistent with §26.87. Attachment 10 to this program sets forth these procedures in detail. To ensure separation of functions in a proposal to remove a firm's eligibility, GDOT has determined that the GDOT Equal Opportunity Division will serve as the decision-maker in the required proceedings. The GDOT Equal Opportunity Division has established an administrative "firewall" to ensure that GDOT Equal Opportunity Division will not have participated in any way in actions leading to or seeking to implement the proposal to remove the firm's eligibility, and is not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions (including the decision to initiate such a proceeding).

### **Section 26.88 Summary Suspension of Certification.**

GDOT will follow procedures consistent with §26.88 regarding the suspension of a DBE's certification.

A DBE's certification shall be immediately suspended 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.

A DBE's certification will be immediately suspended 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).

When a firm is suspended pursuant to §26.88 (a) or (b), GDOT will 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. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of Part 26 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.

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.**

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 suspension will either be lifted and the firm's certification reinstated, or a decertification action under §26.87 of this part will be initiated. If a decertification proceeding is commenced, the suspension remains in effect during the proceeding. The decision to immediately suspend a DBE under §26.88(a) or (b) is not appealable to the U.S. DOT.

Failure of GDOT to either lift the suspension and reinstate the firm or commence a decertification proceeding as required by paragraph (g) of §26.88 is considered a constructive decertification, which action is appealable to the U.S. DOT under §26.89.

### **Section 26.89 Certification Appeals**

Any firm or complainant may appeal a decision of GDOT in a certification matter to U.S. DOT. A firm that wants to file an appeal must send a letter to the U.S. DOT within 90 days of the date of the final decision of GDOT, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact(s) GDOT failed to consider, or what provisions of Part 26 were not properly applied. The U.S. DOT may accept an appeal filed later than 90 days after the date of the decision if the U.S. DOT determines that there was good cause for the late filing of the appeal, or in the interest of justice.

Appeals may be sent to:

U.S. Department of Transportation  
Departmental Office of Civil Rights  
1200 New Jersey Ave., S.E.  
Washington, DC 20590-0001

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

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

## **SUBPART F – COMPLIANCE AND ENFORCEMENT**

### **Section 26.101 Compliance Procedures Applicable to GDOT**

GDOT understands that if it fails to comply with any requirement of this part, GDOT 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.

### **Section 26.109 Information, Confidentiality, Cooperation and intimidation or retaliation**

Information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law will be safeguarded from disclosure to third parties.

GDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Notwithstanding any contrary provisions of state or local law, GDOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.

Notwithstanding any provision of Federal or state law, information that may reasonably be construed as confidential business information will not be released to any third party without the written consent of the firm that submitted the information, including applications for DBE certification and supporting information. However, this information will be transmitted to USDOT in any certification appeal proceeding under §26.89 or to any other state to which the individual's firm has applied for certification under §26.85.

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 USDOT 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).

GDOT, contractor, or any other participant in the program will 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,

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proceeding, or hearing under this part. GDOT understands that it is in noncompliance with Part 26 if it violates this prohibition.

## **ATTACHMENTS**

- Attachment 1 Regulations: 49 CFR Part 26 or website link
- Attachment 2 Organizational Chart
- Attachment 3 Link to DBE Directory
- Attachment 4 Overall Goal Calculations
- Attachment 5 Demonstration of Good Faith Efforts or Good Faith Effort Plan - Forms 1 & 2
- Attachment 6 DBE Monitoring and Enforcement Mechanisms
- Attachment 7 DBE Certification Application Form
- Attachment 8 State's UCP Agreement
- Attachment 9 Fostering Small Business Participation
- Attachment 10 Procedures for Removal of DBE's Eligibility

**ATTACHMENT 1**

Regulations: 49 CFR Part 26, or link to website

The Federal Register 49 CFR Part 26: Participation by Disadvantaged Business Enterprises in Department of

Transportation Programs; Final Rule can be found at the following website:

<https://www.ecfr.gov/current/title-49/subtitle-A/part-26?toc=1>



**ATTACHMENT 3**  
Link to Georgia DBE Directory

The directory can be found online at:

<https://www.dot.ga.gov/GDOT/Pages/DBE.aspx>

**ATTACHMENT 4**

Section 26.45: Overall DBE Three-Year Goal Methodology

This will be submitted separately.

**ATTACHMENT 5**

**Demonstration of Good Faith Efforts - Forms 1 & 2**

**FORM 1: DISADVANTAGED BUSINESS ENTERPRISE (DBE) UTILIZATION**

The undersigned bidder/offeror has satisfied the requirements of the bid specification in the following manner:

Bidder/offeror has met the DBE contract goal  
The bidder/offeror is committed to a minimum of \_\_\_\_ % DBE utilization on this contract.

Bidder/offeror has not met the DBE contract goal  
The bidder/offeror is committed to a minimum of \_\_\_\_% DBE utilization on this contract and has submitted [*or “will submit,” if recipient made compliance a matter of responsibility*] documentation demonstrating good faith efforts.

Legal name of bidder/offeror’s firm: \_\_\_\_\_

Bidder/Offeror Representative:

\_\_\_\_\_  
Name & Title

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

**FORM 2: LETTER OF INTENT**

*Note: The authorized representative (AR) named below must be an individual vested with the authority to make contracting decisions on behalf of the firm.*

Name of bidder/offeror's firm: \_\_\_\_\_

Name & title of firm's AR: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Name of DBE firm: \_\_\_\_\_

Name & title of DBE firm's AR: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_ State: \_\_\_\_\_ Zip: \_\_\_\_\_

Phone: \_\_\_\_\_ Email: \_\_\_\_\_

Work to be performed by DBE firm:

<i>Description of Work</i>	<i>NAICS</i>	<i>Dollar Amount / %*</i>	<i>Dealer/Manufacturer**</i>

*\*Percentage is to be used only in negotiated procurements, including design-build contracts*

*\*\*For material suppliers only, indicate whether the DBE is a manufacturer or a regular dealer as defined by §26.55.*

The undersigned bidder/offeror is committed to utilizing the above-named DBE firm for the work described above. The total expected dollar value of this work is \$ \_\_\_\_\_. The bidder/offeror understands that if it is awarded the contract/agreement resulting from this procurement, it must enter into a subcontract with the DBE firm identified above that is representative of the type and amount of work listed. Bidder/offeror understands that upon submitting this form with its bid/offer, it may not substitute or terminate the DBE listed above without following the procedures of 49 CFR Part 26, §26.53.

\_\_\_\_\_  
Signature of Bidder/Offeror's Authorized Representative

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

The undersigned DBE affirms that it is ready, willing, and able to perform the amount and type of work as described above, and is properly certified to be counted for DBE participation therefore.

\_\_\_\_\_  
Signature of DBE's Authorized Representative

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

**If the bidder/offeror does not receive award of the prime contract, any and all representations in this Letter of Intent shall be null and void.**

**Submit this page for each DBE subcontractor.**

## ATTACHMENT 6

### **DBE Monitoring and Enforcement Mechanisms**

GDOT will take the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26.

1. GDOT will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.
2. GDOT will implement similar action under its own legal authorities, including responsibility determinations in future contracts. Attachment 6 lists the regulation, provisions, and contract remedies available to us in the events of non-compliance with the DBE regulation by a participant in GDOT's DBE Program.
3. GDOT will implement a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (i.e., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. This will be accomplished by the following means:
  - a. Review bid package documentation thoroughly, obtaining clarification, if necessary.
  - b. Review monthly reports regarding employment as well as DBE participation to ensure adherence to the plan as represented in bid documents and as stipulated in this program.
  - c. Monitor progress of payments to DBEs through monthly reports from prime contractors.
  - d. Monitor progress of DBEs work through on-site visits and communication with DBEs.
4. GDOT will implement a monitoring and enforcement mechanism that will include written certification that GDOT has reviewed contracting records and monitored work sites for this purpose. All contracts will be reviewed during close out to ensure compliance. The site will be monitored weekly by GDOT personnel. The DBELO will be advised of any noncompliance issues. The DBELO will advise the contractor or subcontractor of any noncompliance issues and require immediate rectification. A written statement from the DBELO certifying that the contracting records were reviewed and the work site was monitored will be kept at GDOT. Written records of the work site monitoring are maintained by the EEO staff and are available for review and assessment as necessary.
5. GDOT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award.

In addition, GDOT will require prime contractors to maintain records and documents of payments to DBEs for three (3) years following the performance of the contract. These records will be made available for inspection upon request by any authorized representative of GDOT or USDOT. This reporting requirement also extends to any certified DBE subcontractor.

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

**ATTACHMENT 7**  
DBE Certification Application Form

GDOT will use the same forms as the Unified Certification Program (UCP). The forms can be found at the following website:

<https://www.transportation.gov/sites/dot.gov/files/docs/New%20DBE%20Certification%20Application%2011-18-2014.pdf>



Revision Date: 2023-31-7

**ATTACHMENT 8**  
State's UCP Agreement

Information on the State of Georgia UCP can be found at:  
<https://www.dot.ga.gov/GDOT/Pages/DBE.aspx>

## ATTACHMENT 9

### Fostering Small Business Participation

*[Recipients are required to create and implement a race-neutral small business element as part of their DBE programs, in compliance with §26.39. The following components and notes are potential strategies, but are not explicit recommendations. You must define the methods you will use to comply with the requirements of §26.39.]*

#### 1. Objective/Strategies

*[As part of this program element you may include, but are not limited to, the following strategies:]*

*(1) Prime contracts under [a stated amount (e.g., \$1 million)] will be set-aside for small businesses. Only those firms meeting the definition of a small business, as described below, will be eligible for award of these contracts.*

*(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.*

#### 2. Definition

*[Review the guidelines below, and §26.39, and develop your own definitions, making note of the following:*

- DBE firms should be identified in the Small Business element of the recipient’s DBE program as eligible for the program unless there is a DBE micro-Small Business Program element in place.*
- Size standard should be consistent with 49 CFR 26.5 and must be no larger than the Small Business Administration’s size standards. DBE firms and small firms eligible for the program should be similarly sized to reduce competitive conflict between DBE and non-DBE firms.*
- Personal Net Worth standards (optional) – should be consistent with 49 CFR Part 26 thresholds.*

- *Definitions must clearly state that all businesses meeting the criteria outlined in this element will be considered to be small businesses, without regard to race or gender.]*

### **3. Verification**

*[Recipients must diligently attempt to minimize fraud and abuse in the small business element of its DBE program by verifying program eligibility of firms. Verification does not necessarily involve creating a new certification category, though that is one option. Any verification procedure must allow for participation of all small businesses (relying exclusively on local/state M/WBE certification, SBA 8(a) certification, or other programs that include race/gender/geographical considerations as a condition of the certification is not an acceptable means of verifying eligibility, and is not compliant with the race-neutral requirements of §26.39).]*

### **4. Monitoring/Record Keeping**

- *[Explain how will the information will be organized (for counting purposes)*
- *SB element should be reasonably monitored]*

### **5. Assurance**

*[Recipients should include the following assurances in their small business programs:]*

1. The program is authorized under state law;
2. Certified DBEs that meet the size criteria established under the program are presumptively eligible to participate in the program;
3. No limits are placed on the number of contracts awarded to firms participating in the program, but every effort will be made to avoid creating barriers to the use of new, emerging, or untried businesses; and
4. Aggressive steps will be taken to encourage those minority and women owned firms that are eligible for DBE certification to become certified.
5. The program is open to small businesses regardless of their location (i.e., there is no local or other geographic preference).

## ATTACHMENT 5

### Overall DBE Three-Year Goal Methodology

**Name of Recipient:** Georgia Department of Transportation

**Goal Period:** FY 2024-2026

<b>DOT-assisted contract amount:</b>	FY-2024	\$1,435,000
	FY-2025	\$135,000
	FY-2026	\$872,500
	<b>Total</b>	<b>\$2,442,500</b>

**Overall Three-Year Goal:** 9.75%, to be accomplished through 8.14% RC and 1.61% RN

**Total dollar amount to be expended on DBEs:** \$238,143.75 [*multiply goal % x DOT-assisted amount*]

**Describe the Number and Type of Contracts that the airport anticipates awarding:**

Contracts Fiscal Year #1

1. Pavement Management Plan Study - \$630,000
2. Exhibit A Research- \$805,000

Contracts Fiscal Year #2

1. Wildlife Hazard Assessments - \$135,000

Contracts Fiscal Year #3

1. Exhibit A Research- \$805,000
2. Wildlife Hazard Assessments- \$67,500

**Market Area:** The entire state of Georgia was used as the market area given the proposed scope of the anticipated projects in the next three years. This represents the area in which the sponsor spends a substantial majority of its contract dollars, since the goal is for projects throughout the state.

**Step 1.** Actual relative availability of DBEs

The base figure for the relative availability was calculated as follows:

Method: Use DBE Directories <https://gdotbiext.dot.ga.gov/ext-bi/saw.dll?dashboard>

and Census Bureau Data from <https://data.census.gov/cedsci/advanced>

**FY21-23**

NAICS		DBE's	Total NAICS Contractors	%DBE	% of Work	Weighted Percent
541712	Research and development in the physical, engineering, and life sciences (except biotechnology)	3	47	6.4	80	5.1%
541330	Engineering Services	180	1,824	9.9	20	2.0%
	<b>Total</b>	183	1871	16.3	100	7.1%

Divide the total number of DBE’s by the total number of All Firms = base figure for each contract.

Base figure = 7.1% of all firms ready, willing and able.

**Step 2: Adjustments to Step 1 base figure**

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

Past History Participation

One piece of data used to determine the adjustment to the base figure was the median of historical DBE accomplishments, as follows:

Year	Project	Goal%	Accomplishment %
2018	Update GA Statewide Aviation System Plan(GSASP)	8.45%	10.0%
2019	Economic Impact Study; Air Service Study; Wildlife Site Visit	20.2%	16.3%
2020	As-Built Survey	0.0%	12.4%
2021	Air Cargo Study, Capacity Analysis, Obstruction Surveys	13.43%	15.94%
2022	Pavement PCN Analysis, Problematic Taxiway Geometry Study, Wildlife Hazard Assessments, Obstruction Surveys	13.83%	9.32%

Arranging this historical data from low to high, (16.3%, 15.94%, 12.4%, 10.0%, 9.32%) the median is 12.4%.

Step 1 Base averaged with historical median:  $(7.1\% + 12.4\%) / 2 = 9.75\%$

To arrive at an overall goal, the Step 1 base figure was added to the Step 2 adjustment figure and the total was averaged, arriving at an overall goal of 9.75%. GDOT believes this adjusted goal accurately reflects DBE participation that can be achieved for the type(s) of work being awarded during this three-year period.

Disparity Study

A Disparity Study for highway projects in the State of Georgia was prepared and published for GDOT in 2016. The subcontractor firms listed as over-utilized by the Disparity Study are trucking firms. However, the disparity study did not show that any of the industries that will be utilized in the next three years by GDOT are over-utilized. Also, the study did not look at airport specific projects as part of its analysis; thus, the Disparity Study will not be used for adjustment to the Base Figure.

Based on this data, no adjustment will be made to the overall goal. It will remain at 9.75%.

**Breakout of Estimated “Race and Gender Neutral” (RN) and “Race and Gender Conscious” (RC) Participation.**

GDOT will meet the maximum feasible portion of the overall goal by using RN means of facilitating DBE participation.

1. Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitates DBE, and other small businesses, participation;
2. Providing a copy of the Invitation to Bid, when requested, to certified DBEs for each project being advertised;
3. Ensuring distribution of DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors;
4. Providing a copy of the Invitation to Bid, when requested, to certified DBEs for each project being advertised.

GDOT estimates that in meeting the established overall goal of 9.75%, it will obtain 1.61% from RN participation and 8.14% through RC measures.

This breakout is based on:

- a) In FY-18, FY-20 and FY-21 GDOT’s accomplishments exceeded the goal by an average of 1.6%, which may be construed as evidence of race-neutral participation. Therefore 1.6% of the 9.75% goal is expected through race-neutral means and the remaining 8.14% is to be obtained by race-conscious measures.

GDOT will adjust the estimated breakout of RN and RC DBE participation as needed to reflect actual DBE participation [see §26.51(f)] and track and report RN and RC participation separately. For reporting purposes, RN DBE participation includes, but is not necessarily limited to the following: DBE participation through a prime contract obtained through customary competitive procurement procedures; DBE participation through a subcontract on a prime contract that does not carry a DBE goal, DBE participation on a prime contract exceeding a contract goal, and DBE participation through a subcontract from a prime contractor that did not consider a firm’s DBE status in making the award.

## PUBLIC PARTICIPATION

**Consultation:**

In establishing the overall goal, GDOT provided for consultation and publication. This process included consultation with minority, women, 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 the GDOT’s efforts to establish a level playing field for the participation of DBEs. The consultation included a scheduled, direct, interactive exchange with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and was conducted before the goal methodology was submitted to the operating administration for review. Details of the consultation are as follows.

The consultation engaged in a teleconference, which was held on July 31, 2023 at 11:00 AM EST. Two weeks prior to the teleconference, a notice was posted on GDOT’s official website advertising the teleconference to interested parties. Please see Attachment 5-1 for a screen shot of the notice.

There were 17 attendees. For a list of attendees, see attachment 5-2.

The comments received during the course of the consultation are below:

- Attendees were interested in an overview of the DBE Goal and Program process.
  - They were directed to resources available on the GDOT website.
- Clarified that we cannot consider a DBE towards the goal unless they are certified with the state of Georgia.
- Attendees had questions about the difference between the DBE and ACDBE application process.
  - They were directed to resources available on the GDOT website.
- Shevan Richardson asked about any supportive services available to applicants.
  - Corzetta sent an email to the EEO office to find out more information.
  - Ashley Hunter offered her contact information to anyone who has more questions. She works in the GDOT Diversity office. [adhunter@HNTB.com](mailto:adhunter@HNTB.com)
- Applicants were interested in obtaining a copy of the goal and program.
  - We are posting those documents on the GDOT DBE Website.
  - Marisa offered her contact information to anyone who wants a copy of the goal and program. [Marisa.fluhr@woolpert.com](mailto:Marisa.fluhr@woolpert.com)
  - Asked for any recommendations by EOD August 1<sup>st</sup>, 2023.

A notice of the proposed goal was published on the GDOT official website before the methodology was submitted to the FAA.

If the proposed goal changes following review by the FAA, the revised goal will be posted on GDOT official website.

Notwithstanding paragraph (f)(4) of §26.45, GDOT proposed goals will not be implemented until this requirement has been met.

***Public Notice Language:***

**PUBLIC NOTICE**

GDOT hereby announces its Disadvantaged Business Enterprise (DBE) participation teleconference for FAA-funded contracts/agreements. The proposed conference pertains to projects occurring in federal fiscal years 2024 through 2026. The teleconference will be held on July 31 between 11:00 and 11:30 PM EST for the purpose of consulting with stakeholders to obtain information relevant to the goal-setting process. Please call the following number to participate in the teleconference: 1-937-240-2430; Access Code: 3751149.



## Attachment 5-1

GDOT Georgia Department of Transportation

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[Projects](#) [Travel Info & Data](#) [Doing Business With GDOT](#) [Local Government](#) [Programs & Funding](#) [About GDOT](#)

### Disadvantaged Business Enterprise (DBE) Participation Teleconference - July 31

July 13, 2023, 5:00 PM

Georgia DOT announces its **Disadvantaged Business Enterprise (DBE) participation teleconference** for FAA-funded contracts/agreements. The proposed conference pertains to projects occurring in federal fiscal years 2024 through 2026. The conference will allow stakeholders to obtain information relevant to the goal-setting process.

Monday, July 31, 2023  
11:00 AM - 11:30 AM EST

Join the teleconference at **1-937-240-2430**; access code: **3751149**

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Attachment 5-2

	<b>Name</b>	<b>Company</b>
1	Preston Dickie	Mission Yogurt
2	Cynthia Rumph	Consultant
3	Tim Miller	Spot on Enterprises
4	Brittany Miller	Spot on Enterprises
5	Lorena Gomez	Express Concrete and Granite
6	Wesley Higgins	Speed and Logistics
7	Terrence Dailey	AC&DC Power Technologies
8	Yovan Golden	Work Elements
9	Michelle Hirosi	Newman Consulting
10	Kimberly Seal	CERM
11	Yasmin Moreno	CERM
12	Ashely Hunter	HNTB
13	Travis Taylor	
14	Shavon Richardson	Grant Consulting
15	Michelle Pierce	Pierce Systems
16	Bentley Thomas	New Wave Management
17	Corzetta Motley	GDOT