

**STATE OF GEORGIA**  
**DEPARTMENT OF TRANSPORTATION**  
**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM PLAN**

**POLICY**

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

It is the policy of the Georgia Department of Transportation to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT assisted contracts.

It GDOT Policy Objectives:

1. To ensure nondiscrimination in the award and administration of USDOT assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for USDOT assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in USDOT assisted contract;
6. To assist the development of firms so that they can compete successfully in the market place outside the DBE Program; and,
7. To provide appropriate flexibility in establishing and providing opportunities for DBEs.

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

---

Harold E. Linnenkohl, COMMISSIONER

# TABLE OF CONTENTS

## POLICY

### I. GENERAL

#### Section

- 1.01 The Georgia Department of Transportation (GDOT) Disadvantaged Business Enterprise (DBE) Program Objectives.
- 1.02 The GDOT DBE Program Goals and Federal Funding Regulations
- 1.03 GDOT's Assurances
- 1.04 Definitions

### II. Responsibilities for DBE Program Federally Assisted Contracting Functions

- 2.01 Responsibility for the DBE Program and Implementation Liaison Officer (Equal Opportunity Division Director)
- 2.02 Responsibility and function of GDOT Contract Administration, Office of Construction and Districts
- 2.03 Reconsideration Official.

### III Administrative Requirements

- 3.01 DBE financial institutions.
- 3.02 Disadvantaged Business Enterprise Directory
- 3.03 Steps GDOT will take to address over concentration of DBE in certain types of work
- 3.04 Business Development

### IV DBE Goals, Good Faith Effort and Counting DBE Participation

- 4.01 Contractor(s) Records
- 4.02 GDOT Assurances
- 4.03 Prime Contractor(s) obligation and DBE subcontracting
- 4.04 Procedure(s) for Certified DBE's
- 4.05 Department Contract Assignment(s)
- 4.06 Substitution or Transfers of DBE Commitment
- 4.07 Prompt Payment Mechanism
- 4.08 Tracking of Contract Awards and DBE Payments

**V. Disadvantaged Business Enterprise Goal Setting Methodology**

The Determination of Certified "Ready, Willing and Able" DBE's  
Determining the Race and Gender Neutral and the Race and Gender  
Conscious Portion of the Goal  
Calculation of the DBE Capacity Benchmarks  
Contract Goals  
Means GDOT will use to meet the DBE Overall Goal  
Good Faith Efforts  
Termination of DBE Contractors  
Method by Which DBE participation is Counted Toward the Goal

**VI. Certification Standard**

Purpose  
Certification requirements

**VII. UNIFIED CERTIFICATION PROGRAM (UCP)**

Procedures for UCP Certification.  
Removing a DBE's Eligibility.  
Third Party Challenges  
Reciprocity  
Process for Certification Appeals to the United States Department  
of Transportation.

**VIII. RE-CERTIFICATION PROCEDURE**

Purpose  
General

**IX. Unified Certification Directory**

**X. Airport Concessionaires**

**XI. Home On-site visits**

**XII. Complaint Policy**

**A. Complaint Procedure**

**XIII. Compliance and Enforcement  
Enforcement Action Under DBE Program**

**XIII            Confidentiality, Intimidation and Retaliation**

Appendix

Georgia DBE Uniform Certification Program Application and Personal  
Financial Statement

Disadvantaged Business Enterprise Directory (updated monthly)

## **I. GENERAL**

### **1.01 Georgia Department of Transportation (GDOT) Disadvantaged Business Enterprise (DBE) Program Objectives**

GDOT's DBE program reflects a determination that there is a strong basis in evidence linking it to disparities between the proportion of DBE's hired for projects or contracts and the proportion of DBE's ready, willing and able to do the work. This DBE Program plan, is being enacted only after GDOT's exhaustive efforts to remedy this disparity by race-neutral and race conscious means.

### **1.02 The GDOT DBE Program Goals and Federal Funding Regulations**

#### **Federal Regulations**

- (a) 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, and Federal Transit Authority grants.
- (b) Except as provided herein, the provisions of this Plan shall apply to all federally-funded procurement and contracting, including construction and the acquisition of all commodities, equipment, goods, and services (including professional services), however, titled and irrespective of the modality or manner procured, and irrespective of whether purchased or leased.
- (c) The following categories are initially established by the Equal Opportunity Division to identify the nature and types of federal contracting which are encompassed under this plan. From time to time, and upon recommendation of the Equal Opportunity Director and Commissioner of Transportation, these categories may be amended:

(1)Category A - Construction: including, for example, and without limitation, any and all contracting related to road, bridges, buildings, facilities and other erected structures on real estate in the State of Georgia such as new construction, rehabilitation, remodeling, and repairs.

(2)Category B - Commodities: including, for example, and without limitation, the purchase of all goods, equipment, food stuffs, office, supplies, arts, furniture, books, other materials for education, libraries, and other tangible personal property not associated with, and subsumed under the provision of a service identified in Categories A, C, and D.

(3)Category C - Services: including, for example, and without limitation, the procurement of advertising, printing, non-construction repairs, janitorial services, training seminars and workshops, computer and information systems, security, shipping and mailing, microfilm, courier, storage, travel, consulting, and any other non-professional services.

(4)Category D - Professional Services: including, for example, and without limitation, the purchase of any and all services which applicable selection criteria may require a bidder/offeror to possess a license or other certificate of competency such as accounting, auditing, engineering and architectural services.

### 1.03

#### **GDOT's Assurances**

GDOT, as the recipient, shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any federally-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 federally-assisted contracts. GDOT's DBE program, as required by 49 CFR Part 26 and as approved by the United States Department of Transportation, is incorporated by reference in this agreement. GDOT has programs and policies in place to ensure compliance with Title VI of the 1964 civil Rights Act and Code of the Federal Register 49 part 26 as outlined in this Program. 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 United States Department of Transportation may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*) Sanctions may include, but not limited to termination of contract, debarment, removal from bid list as deemed appropriate by the Department. Procedures shall be followed as outlined in the Good faith efforts evaluation determination.

### 1.04

#### **Definitions**

- (a) "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.
- (b) "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.
- (c) "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.).
- (d) "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.
- (e) "Contractor" means one who participates, through a contract or subcontract (at any tier), in a federally-assisted highway, transit, or airport program.
- (f) "Department" or "USDOT" refers to 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).
- (g) "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.
- (h) "Federally-assisted contract" means any contract between GDOT and a contractor (at any tier) funded in whole or in part with federal financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.
- (i) "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 goal.
- (j) "Immediate family member" means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.
- (k) "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.
- (l) "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.
- (m) "Native Hawaiian" means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.

- (n) "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.
- (o) "Operating Administration" or "OA" refers to the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and the Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.
- (p) "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.
- (q) "Primary industry classification" means the six digit classification code designation which best describes the primary business of a firm. The code designations are described in the North American Industrial Classification System (NAICS) which replaces the Standard Industry Code system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site ([www.ntis.gov/naics](http://www.ntis.gov/naics)).
- (r) "Principal place of business" means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, GDOT will determine the principal place of business for DBE program purposes.
- (s) "Race-conscious measure or program" is one that is focused specifically on assisting only DBEs, including women-owned DBEs.

- (t) "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.
- (u) "Small Business Administration" or "SBA" means the United States Small Business Administration.
- (v) "Small business concern" means, with respect to firms seeking to participate as DBEs in federally-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 13 CFR Sec. 26.65(b).
- (w) "Socially and economically disadvantaged individual" means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is:
  - (1) Any individual who GDOT finds to be socially and economically disadvantaged. This will be determined on a case-by-case basis.
  - (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
    - (i) 'Black Americans' includes persons having origins in any of the Black racial groups of Africa;
    - (ii) 'Hispanic Americans' 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' includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;

- (iv) "Asian-Pacific Americans" includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- (v) 'Subcontinent Asian Americans' 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.
- (x) 'Tribally-owned concern' means any concern at least 51 percent owned by an Indian tribe as defined in this section.

## **II RESPONSIBILITIES FOR DBE PROGRAMS FOR FEDERALLY-ASSISTED CONTRACTING Functions**

### **2.01 Responsibility of a DBE Program and Implementation Liaison Officer (Equal Opportunity Division Director)**

- (a) The Commissioner of the Georgia Department of Transportation, as the Chief Administrator of the Department, is ultimately responsible for all matters relating to civil rights.
- (b) The Deputy Commissioner has direct authority and control over the Department's Equal Opportunity Division/Compliance Programs and provides overall guidance and policy directions in Disadvantaged Business Enterprise Program and all civil rights matters affecting the Department.

- (c) The Equal Opportunity Division Director (DBE Liaison Officer) and his staff, under the control and authority of the Georgia Department of Transportation Commissioner directs and supervises the operations of the Equal Opportunity Division programs functions. Staff members work in the following areas: Construction Contract Compliance, Internal Personnel Practices, Disadvantaged Business Enterprise, Civil Rights Title VI and VII, Environmental Justice and Local Government Compliance.
- (d) The Construction Division and the EEO Division are responsible for the enforcement of the DBE regulations and policies on Department of Transportation construction programs.
- (e) Georgia Department of Transportation Equal Opportunity Division is the lead agency responsible for State of Georgia DBE Unified Certification Program, which includes the application, certification, decertification, and recertification, on-sites, appeals and directory.
- (f) The DBE Liaison or designee will investigate all internal and external civil rights complaints registered with the department. All reports of DBE program violations will be managed and maintained in the Equal Opportunity Division.

**Specific Duties of the DBE Liaison Officer (Equal Opportunity Division Director)**

1. Review all applications and certify only those firms that qualify as Disadvantaged Business Enterprises.
2. Notify the District EEO representative, in writing, of the results of their review: was the applicant approved or denied.
3. Review certified companies and either recertify or decertify according to their compliance with Department policies.

4. Establish a complaint procedure. Maintain documentation of all complaints received from DBE's, non-DBE's, contractors, superintendents, and Department personnel. Maintain consistent documentation of complaint and any action taken.
5. Maintain a current list of certified DBE firms on the GDOT Office of Contract Administration web page.
6. Confer with and assist the Office of Contract Administration in setting Contract DBE goals according to the appropriate regulations and Department policies.
7. Assist the Office of Contract Administration in the approval of Contractor DBE Plans before the Award of the Contract.
8. Train/assist prime contractors on required Biz Web entries.
9. Train/assist department personnel with Biz Track, Biz Web, and Biz Net.
10. Provide ad hoc reports from Biz Track for Department personnel, as requested.
11. Maintain a subcontractor database via Biz Track and Biz Web. Database shall include DBE's and non-DBE subcontractors and contractors on all federal aid and state aid projects.
12. Perform site inspections and labor interviews throughout the State.
13. Submit Semi-annual reports to FHWA of work designated for DBE firms on construction and consultant engineering Contracts.
14. Maintain a close liaison with District field construction personnel and assist them in carrying out their responsibilities with respect to the Department's DBE Program.
15. Approve/specify appropriate action to be taken concerning shortfalls in DBE Participation and waiver of DBE commitments.

16.\*\* Maintain a DBE directory and make it available in print and electronically

\* 49 CFR 26.25

\*\* 49 CFR 26.31

## **2.02 Responsibility and Function of GDOT Contract Administration, Office of Construction and Districts**

### **Contract Administration**

1. Make recommendation to the DBE Committee of the goals to be included in the bid proposal.
2. Maintains a list of DBE firms to be used on project from the Prime Contractors.
3. Audit use of DBE firms on projects during monthly audit of project records and notify Project Engineer of violations. Report any such violation to the District EEO representative.

### **Office of Construction**

1. Review Contract requirements for DBE goals.
2. Monitor use of DBE firms on project during construction inspections.

### **District Office**

1. Primarily responsible for the administration of the DBE program for projects under construction within the District.
2. Set up appropriate procedures acting directly or through the Area Engineer to ensure that the Contractor meets DBE requirements in each Contract. District EEO representative or District Contract Manager shall obtain a list of approved DBE firms on each project from Biz Track/Biz Web/Biz Net and transmit information to the Area Engineer.



3. Monitor DBEs approved to perform Work on the project in the Contract and on the Awards List distributed by the Office of Contract Administration. Verify that DBE firms working are approved to work on the project and that DOT form 485 Request for Approval of Subcontract has been submitted by the Prime Contractor and approved by the Department.
4. Ensure that the DBE Participation Report is submitted quarterly by the Prime Contractor showing all DBE information.
5. District representative shall review all quarterly DBE reports to insure the prime contractor is in accordance with his DBE plan. Any deviations shall be investigated and recorded in Biz Track.
6. Ensure that the DBE firm performs Work or supplies materials according to previous approval according to the contractors DBE utilization report.
7. Obtain written certified verification of the dollar volume of Work performed and paid for from the Prime Contractor for each DBE Subcontractor before submitting the Final Pay Statement.
8. Ensure that the Contractor meets the DBE goal established and accepted for that project. The District should take appropriate action as the project progresses to ensure the meeting of the DBE goals. All DBE shortfalls shall be reported to the DBE Liaison for handling.
9. District EEO representative shall discuss DBE requirements at preconstruction Conference and inform the Contractor that the approved DBE firms are required to perform the Work designated in the Contract.

**Area/Project Engineer Office**

1. Maintain an accurate list of DBE firms approved for each project and ensure that sufficient Work is set aside to meet the Contract goal as shown in the Contract or as modified by the contract modifications. Notify the District EEO representative if a shortfall is anticipated.

2. Review DBE Subcontracts and supply agreements for compliance with the Contract. Require the DBE firm to perform Work or supply material according to the approved list.

**No work designated for a DBE firm can be performed by other firms without prior approval by DOT. It may be necessary to withhold payments to the Contractor to enforce the DBE requirements contained in the Contract.**

3. Refer any situations that require investigation to the District EEO representative and DBE Liaison.
4. Require Prime Contractor to submit a DBE Participation Report listing approved firms and dollar value of DBE agreements for Subcontracts and Work performed. The Prime Contractor updates this report whenever conditions concerning DBE participation change or on a quarterly basis. Promptly transmit copies of this report to the District EEO representative and the District Office of Contract Administration.
5. Compare the information in this report to the original DBEs listed in the Contract. Note and report any changes to the District Office of Contract Administration and the District EEO representative.

**Failure to submit the DBE Participation Report within 30 calendar days following the end of the quarter may cause payment to the contractor to be delayed or withheld.**

6. The Project Engineer may request a hauling plan when a DBE firm is listed for hauling credit. The Project Engineer uses this plan to determine which firm is actually doing the hauling. If the DBE firm deviates from the hauling plan, the Project Engineer may request the Contractor to submit a revised hauling plan and make note of any changes. If problems persist, the Project Engineer shall notify the District EEO representative. Credit for DBE participation may be disallowed for failure to comply with the provisions of the DBE regulations included in the Contract.

7. Monitor and compare the payrolls of DBE firms on the project with the Prime Contractor's payroll. Check for the sharing of employees. Separate payroll files should exist in the project records for each Subcontractor (DBE and non-DBE). Swapping personnel between DBE and non-DBE firms is not acceptable.
  
8. Record pertinent information concerning Subcontractors (DBE and non-DBE) in Contract Diaries. Note any DBE Subcontractors working on the project daily in records.

### **III. Administrative Requirements**

#### **3.01 Financial Institutions [49 CFR 26.27]**

GDOT does not currently maintain any deposits in DBE financial institutions. There were three institutions identified and utilized in the three years. However, Prime contractors are strongly encouraged to use the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in their communities. To obtain a list of DBE financial institutions please send your request to Georgia Department of Transportation, Equal Opportunity Division, Room 142, No. 2 Capitol Square, S.W., Atlanta, Georgia 30334.

#### **3.02. Disadvantaged Business Enterprise Directory [49 CFR 26.31]**

GDOT maintains and make available to all interested persons a directory identifying all firms eligible to participate as a DBE in its programs and services. GDOT revises the DBE directory on a monthly basis and is made available electronically and in print. The DBE directory is listed on the GDOT website: [www.dot.state.ga.us](http://www.dot.state.ga.us). The listing provides the following information for each firm the Principal contact name, address, phone number, fax number, e-mail address (if available) vendor identification number, DBE status, types of work the firm performed and date of certification.

**3.03. Steps GDOT will take to address over-concentration of DBE's in certain types of work? [49 CFR 26.33]**

- (a) If GDOT determines that DBE firms are so over concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, GDOT will consider appropriate measures to address over concentration. The consider an over concentrations GDOT will consider the percent or number of DBE in a specific industry, the percent or amount of work being conducted by the DBE's in the specified area, the total percent earning in the specific field. This information will be taken to determine if the DBE have a predominance in the specific field or industry.
- (b) Measures considered may include the use of incentives, technical assistance, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which GDOT has determined that non-DBEs are unduly burdened. GDOT may also consider varying its use of contract goals.
- (c) GDOT will obtain the approval of the concerned the Federal Highway Administration (FHWA) operating administration for its determination of over-concentration and the measures it devises to address it.

**3.04. Business Development**

- (a) In order to assist the DBE community GDOT provides support in business development through supportive services, outreach and the Governors Small Business Center and business programming activities throughout the State. The DBE business development program (BDP) assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program.

- (b) As part of a BDP GDOT participates in the established Governor's 'Mentor-Protégé' Program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

Only firms GDOT has certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

- (c) The purpose of this program element is to further the development of DBE's, 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.
- (d) Any mentor-protégé relationship with GDOT shall be based on a written development plan, approved by GDOT, 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 FHWA programs.
- (e) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. GDOT 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 GDOT 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.

## **Mentor-Protégé Program**

Georgia Department of Transportation policy encourages development of the mentor protégé programming relationships and participation in the Governor's Mentor Protégé Program. The Governor's Mentor Protégé which is the only state operated program of its kind in the nation that will support the activities of businesses within the State of Georgia. Mentor Protégé programming assist disadvantaged business firms in gaining the ability to compete successfully in the transportation marketplace.

The Disadvantaged Business Program 'Mentor Protégé' Program provisions in this section will comply with 49 CFR Part 26 Appendix D Mentor-Protégé Program Guidelines. The GDOT Mentor/Protégé Program will work in conjunction with the State sponsored Governor's Mentor Protégé Program administered under the Governor's Small Business Center.

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 transportation work and/or compete in the transportation marketplace outside the DBE program, via the provision of training and assistance from other firms.

Any Mentor-Protégé relationship shall be based on a written development plan, approved by the Georgia Department of Transportation, which clearly sets for 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. The arrangement of the program shall be for one transportation contract period, but not exceed three years or the life of the contract.

ALL MENTOR PROTÉGÉ AGREEMENTS MUST BE APPROVED BY THE GEORGIA DEPARTMENT OF TRANSPORTATION EQUAL OPPORTUNITY DIVISION

To be eligible for credit or reimbursement, the Mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. GDOT 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 GDOT and paid on an incremental basis representing the time the Protégé is working on the contract. DBE's 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.

Only firms GDOT certified as DBEs before they are proposed for participation in a Mentor/Protégé Program are eligible to participate in the Mentor/Protégé Program.

During the course of the Mentor/Protégé relationship, GDOT will credit the Mentor with DBE participation based upon a commercially useful function as defined, as the performance of real and actual services in the discharge of any contractual endeavor. The Mentor and the Protégé must perform a distinct element of work which the business has the skill and expertise as well as the actual performance.

For purposes of making determinations of business size under this part, GDOT will not treat Protégé firms as affiliates of mentor firms, when both firms are participating under an approved Mentor/Protégé Program.

#### **Monitoring Performance of Mentor/Protégé Program Participants**

GDOT implement appropriate mechanisms to ensure compliance by all program participants, which include, but are not limited to,

- (1) Surveys;
- (2) On-site reviews;
- (3) Questionnaires; and
- (4) Audits

GDOT's DBE program includes a monitoring mechanism called BizTrak System to verify that the work committed to DBEs in the agreement is actually performed by the DBEs. The monthly reports are tallied into the BizTrak System on a monthly basis from Contract Administration and the District Offices to generate activity and monthly payment.

This mechanism will provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms) and include a provision ensuring that DBE participation is credited toward overall or contract goals.

**Compliance with Title VI of the Civil Rights Act of 1964  
for Federal-Aid Contracts**

During the performance of the Mentor/Protégé Contract, the Contractor or Consultant, its assignees and successors will comply with GDOT's regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made part of the contract agreement.

**Non-Discrimination in Mentor Protégé' Activities**

The Mentor and Protégé, with regard to the work performed will not discriminate on the ground of race, color, sex, or national origin in the employment selection, retention of subcontractors, including procurements of materials and leases of equipment. The Mentor and Protégé will not participate, either directly or indirectly, in the discrimination prohibited.

**Sanction for Noncompliance:**

In the event the Mentor and /or the Protégé is found to be in noncompliance with the nondiscrimination provisions of the Contract Agreement, GDOT shall impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

Withholding of payments to the Contractors under the Contract until the Contractor complies, and/or Cancellation, termination or suspension of the Contract, in whole or in part.



## **Benefit of Participation to Mentor and Protégé**

### **Mentor Benefits**

Credit for DBE participation while increasing opportunity to partner with a DBE qualified to work on GDOT contracts.

Strengthen long term relationship with small diverse business community.

Develop reinvestment in business partners that provide reliable products and services.

Increase business network for new opportunities.

Demonstrate commitment to new strategies for corporate access for expanding Georgia's economy.

### **Protégé Benefits**

Provides ability for small businesses to learn, grow and develop in the transportation design and construction industry with an already established partner.

Gain ability to expand market and services to non-traditional corporations.

Develop long term business relationships with large transportation corporation.

Ability to gain training as an investment for long term enhanced professional development.

## **Supportive Services Consultant**

GDOT offers Supportive Consultant Services to provide construction management, financial packaging, bidding and estimating, marketing and certification assistance to certified DBE's.

- (1) Financial Packaging: Assist in locating resources of capital, promoting DBE specific loan or bonding programs, and managing cash flow.
- (2) Bidding and Estimating: Provide training and assistance in effective techniques for preparing job costs estimates and calculating profit margins.
- (3) Construction Management: Support on active DBE work, reviewing cost effectiveness of operations; and suggesting efficient procedures for maximizing production while ensuring specification quality.
- (4) Marketing: Developing individual marketing plans based on a DBE company's area of expertise and assisting the firm in setting goals reasonable for growth.
- (5) Certification Assistance: Provide information and assistance in becoming certified as a DBE company and applying for registration as a subcontractor or prequalification as a prime contractor.
- (6) Provide training, support services and business development services to certified DBE's

## **IV. DBE Goals, Good Faith Effort and Counting DBE Participation**

### **4.01 Contractor(s) Records**

For every prime contractor and subcontractor bidding, quoting, or providing services on a federally-assisted contract, the prime contractor will provide the Department with the following information on each contract:

- (1) Firm name;
- (2) Firm address;
- (3) Firm's status as a DBE or non-DBE;

- (4) The age of the firm;
- (5) The annual gross receipts of the firm;
- (6) Description of the type of work to be performed by the DBE's;
- (7) Written and signed documentation of the low bidders commitment to use the DBE's listed in bid submittal;
- (8) Race and gender conscious and/or race and gender neutral DBE solicitation participation;

The Department will require as a condition of prequalification, the collection of the above referenced information.

#### **4.02                    GDOT Assurances**

Central to the GDOT's implementation of the foregoing policy are the signed "Assurances" required of each State Highway Agency by Title 49, Code of Federal Regulations, Part 26 (49 CFR 26) and related statutes and regulations. Each contract GDOT signs with a prime contractor and each subcontract sign with the prime contractor must include the following assurance:

The Contractor, Sub-recipient, Subcontractor and Consultant must sign a statement of assurance that they shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor, subcontractor, consultant and sub-recipient shall carry out applicable requirements of 49 CFR part 26 in the award and administration of federally-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 GDOT deems appropriate.**

#### **4.03 Prime Contractor Obligation and Subcontracting**

In order to receive a highway contract funded with federal money, contractors, sub-contractor and professional service consultants must make the assurance that they will not discriminate on the basis of race, color, national origin or sex in the administration of awards, contracting and performance of the contract.

The Contractor must agree to carry out the applicable requirements of 49 CFR Part 26 in the administration of the contract. Failure by the prime contractor to assure compliance with the DBE regulations may be considered a breach of the Prime contractor agreement with GDOT.

DBE Contract requirements can be satisfied through means that allow an approved DBE firm to obtain work and payment for project related items, such as the following:

The Contractor may count the entire expenditure for actual work subcontracted and performed by any approved DBE firm; Including supplies purchased or equipment leased by the DBE, for the work of the contract (except supplies and equipment the DBE subcontractor purchased or leased from the prime contractor or its affiliate.)

The Contractor may count the expenditure to a DBE manufacturer (i.e., a supplier that actually produces goods from raw materials or substantially alters them for resale.)

The Contractor may count 60% of the expenditures to DBE suppliers that are not manufacturers, provided that the DBE supplier:

- 1) Performs a commercially useful function in the supply process;
- 2) Is established as a regular dealer of the material or supplies being furnished
- 3) Is engaged in selling the material or supplies to the public

According to 49 CFR Subtitle A, a DBE is considered to perform a commercially useful function when "it is responsible for execution of a distinct element of the work of a contract and carrying out its responsibilities by actually performing, managing, and supervising the Work involved."

A regular dealer is defined in 49 CFR Subtitle A as: "a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials or supplies required for the performance of the contract are bought, kept in stock, and regularly sold to the public in the usual course of business. To be a regular dealer, the firm must engage in, as its principal business, and in its own name, the purchase and sale of the products in question. A regular dealer in such bulk items as steel, cement, gravel, stone, and petroleum products need not keep such products in stock, if it owns or operates distribution equipment.

Brokers and packagers shall not be regarded as manufacturers or regular dealers within the meaning of this section.

The Contractor may count the entire expenditure to DBE firms for fees or commissions charged by an approved DBE firm providing a bona fide service. This service includes professional, technical, consultant or managerial services and assistance in procuring essential personnel, facilities, equipment, materials or supplies required for completing the Contract. The Department determines the fee or commission to be reasonable and not excessive as compared to similar services.

The Contractor may count the entire premium for Performance and Payment Bonds and product-related insurance purchased from a DBE agency.

The Contractor may count the entire amount of expenditures to regular DBE dealers for rental of equipment.

The Contractor may count the entire expenditures to DBE firms when a DBE subcontracts part of the work of its contract to another firm, only if the firm is a DBE. The value of the subcontracted work can only be counted if the DBEs subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm will not count toward DBE goal.

## Second Tier Contracting

DBE subcontractors may issue second tier subcontracts only to DBE contractors if the work is to be counted toward the DBE goal.

The Contractor may count expenditure to DBE firms that have contracted to furnish material for the project provided the following are followed. To receive credit for this, the DBE firm must perform a commercially useful function.

- a. 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. Any apparent preferential treatment/distribution of available work should be reported to the DBE Liaison.
- b. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract.
- c. 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.
- d. 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.
- e. The DBE may also lease trucks from a non-DBE and is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since their services are not provided by a DBE.

f. A lease must indicate that the DBE has priority 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 Subcontractor on the outside of the truck.**

DBE credit for furnish, haul and place GAB may only be allowed if the DBE purchases the stone, hauls the stone, and places the stone—using a spreader owned by the DBE and operated by personnel on the DBE Subcontractor's payroll.

**Fraud, abuse or any situation that appears to be strictly a material "pass-through" should be brought to the immediate attention of the DBE Liaison, District EEO Representative or GDOT Project Manager. The DBE Liaison Officer or designee will investigate all written complaints.**

#### **4.04 Certified Disadvantaged Businesses Enterprises Requirement**

Individuals seeking to participate in the Disadvantaged Business Enterprise Program must comply with the regulations found at 49 CFR Part 26. The requirements apply to all DBE's:

##### Certification

Individuals seeking to participate in the DBE Program must become certified. The certification process requires that applicants provide information concerning financial and minority status, gender, ownership, independence and control of their firms. Applications for DBE certification can be obtained through the Office of Equal Opportunity and the GDOT website. No certification will be approved until all the paperwork has been submitted and reviewed. (DBE Application Attached)

## Renewal of Certification

DBE certifications are valid for a period of three years. During the time of certification, the DBE is obligated to notify the Equal Opportunity Office of any changes in the ownership or financial position of the firm that would impact its eligibility under the regulations.

The DBE is also required to submit an annual update of its ownership and financial status by filing an updated DBE application with EEO. It is the responsibility of the DBE to keep their certification current.

## Prequalification

All firms seeking to work on contracts with the Georgia Department of Transportation must obtain a certificate of eligibility from the Office of Prequalification. Certificates of eligibility are renewed annually, but the applications can be filed 90 days before the end of the applicant's fiscal year.

## Leases of Equipment

If a DBE leases equipment from another contractor, the lease agreement must be in writing.

### **4.05 Department Contracts Assignment(s)**

DBE firms should be awarded every opportunity to perform designated work on department contracts without disruption. The Prime Contractor may perform or change order work assigned a DBE Subcontractor in order to prevent delay in completing the project, with the approval of GDOT. However, no DBE credit is allowed for work unless it is performed by an approved DBE.

The above instructions do not apply if the Prime Contractor is a DBE firm, and the firm may subcontract work, subject to meeting the contract requirements.

**The Department will not tolerate fronts, shams, or pass-through. The Area Engineers, Project Engineers and inspectors ensure that the DBE Program is properly administered. When a violation of DBE participation occurs, the DBE Liaison takes appropriate action (against the Prime Contractor and any involved Subcontractors as well as the DBE). The Area Engineer reports any situation that may require investigation to the District EEO representative.**



#### 4.06 Substitution of DBE Commitment

##### A. DBE Substitutions

If the Contractor wishes to substitute one DBE for another, the District Engineer may approve the request and send a copy to the Office of Contract Administration and the EEO Office. A simple letter from the Prime stating they could not get the DBE to perform will not be accepted as documented evidence that a good faith effort was made. Substitutions of DBEs will only be allowed if acceptable documentation is provided. The Contractor's request for substitution must have supporting documentation with reasons for the substitution, including a release from the original DBE stating that there is no objection to the substitution.

Documentation can be in the following forms:

1. Release signed by the designated DBE.
2. Written efforts on behalf of the Prime or Subcontractor, if the DBE is a 2<sup>nd</sup> tier Subcontractor.
3. Phone logs and/or registered letters supporting efforts to get the DBE on the Project to perform work.

**The Prime Contractor will not be allowed to perform the work designated for the DBE, unless prior approval is given.**

**The Georgia Department of Transportation does not Transfers DBE shortfalls.**

The EEO Office will have the final determination on shortfalls and good faith efforts. If a shortfall occurs on a project, the Contractor shall submit a letter to the Project Engineer giving the reasons why the shortfall occurred and their attempts to fulfill the goal providing documentation that they have **made a good faith effort**. The Project Engineer shall review the letter and forward to the District with information as to why the shortfall should or should not be accepted.

The District Construction Engineer shall then review and make any additional comments before forwarding by letter to the Office of EEO for their final ruling. The Office of EEO will review and make a determination; the Office of EEO will then send the Contractor a final determination with copies to the District Office and the Office of Contract Administration. Copies of all correspondence shall be sent to the Office of Contract Administration. Every attempt should be made to achieve the DBE goal on projects as stated in the contract before any ruling will be made.

4.07

**Prompt Payment Mechanisms**

Prime contractor who sublet a portion of their work, shall pay their sub-contractors for satisfactory performance of their contracts no later than fifteen (15) calendar days from receipt of each payment made to them.

- (a) Failure to comply with the terms and conditions of this provision shall constitute a breach of contract and further payments for any work performed may be withheld until such time as corrective action is taken. The prime contractor would be responsible for any corrective work shown at the time of final inspection. If the contractor fails to take corrective action, GDOT reserves the right to terminate the contract.
- (b) Any delay or postponement of payment among the parties may take place only for good cause, with prior written approval from GDOT Equal Opportunity Division.
- (c) All subcontract agreements between the prime contractor and subcontractor shall be in writing and shall contain all of the federal requirements and pertinent provisions of the prime contract.
- (d) Retainage: Special Notice to Contractors. The Department no longer withholds retainage on payments for contracts (construction or consultant) which were Let for bid after January 1, 2000. As a result of this, contractors no longer shall be allowed to withhold retainage from subcontractors. Refer to the appropriate Special Provisions in the Contract.

#### **4.08**

#### **Tracking of Contract Awards and DBE Payments**

The GDOT tracking system (BizWeb@) is a secured external web application that allows contractor, consultants and local government sub-recipients to log in and submit data electronically to GDOT internal BizTrak@ data base.

The DBE tracking system allows approved Contractors and vendors working on federally funded GDOT contracts to submit data to GDOT that include DBE sub-contractors, payments to primes, payments to sub-contractors, company wide and project specific EEO reports, on the job training hours and various note to file. The awards of contracts containing DBE project goals, commitments to provide work and payments made to DBE's can be progressively monitored to confirm that work has been performed and a commercially useful functions has been provide. All Prime contractor and all DBE subcontractors must submit proof of payment to GDOT. This information is entered into the DBE Tracking System by the Consultant Services, Contract Administration, Planning and all Districts Offices. The Equal Opportunity Division downloads the information into a single report. The DBE Tracking and reporting system has all of the required DOT, FHWA and USDOT reporting formats incorporated into the software. The software is designed to keep a running tally of all actual awards and payments.

#### **V. Disadvantaged Business Enterprise Goal Setting Methodology**

Annually, the Georgia Transportation Board makes the decisions on the annual goals set for the State Transportation Department. The Transportation Board receives statistical information from the Equal Opportunity Department on annual DBE program activity, public notice and public comment.

In deriving goals, The GDOT relied on the 49 CFR Part 26 and USDOT's "Tips for Goal-Setting in the DBE Program". GDOT's overall goal is based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate in federally-assisted contracts. The goal method reflects GDOT's determination of the level of DBE participation it would expect absent the effects of discrimination.

Additionally, several other sources of information are relied upon:

- a. The use of disparity studies commissioned and approved by the Georgia Department of Transportation Board, updated bids, awards and DBE participation data.
- b. A review of all firms that are pre-qualified prime contractors, pre-qualified-subcontractors and pre-qualified professional consultants.
- c. A review of all non-pre-qualified firms that received awards for the calendar years.
- d. A review of the dollar value of all prime contracts, subcontracts and professional consultant contracts awarded for the calendar year.
- e. A determination of the market area for GDOT contracting.
- f. Included in this methodology are the general recommendations on goal development from the DBE Rules 49 CFR Part 26, and U.S. Department of Transportation, Office of Small and Disadvantaged Business Utilization.

#### **5.01 The Determination of Certified "Ready, Willing and Able" DBEs**

In accordance with 49 CFR Part 26, GDOT collects and tabulated the bidders' data which included both successful and unsuccessful bidders. This bidders data is maintained in the Office of Contract Administration of the Construction Division and is utilized on an annual basis for DBE goal calculations on availability. GDOT review, consider and analyze the annual gross receipts of the DBE's.

This goal methodology defines available firms as firms that have been pre-qualified by GDOT with respect to their capacity to do work and that reside within the State of Georgia. The DBE availability is determined by the percentage of certified DBE firms as well as pre-qualified as prime contractors, subcontractors, and professional consultants that are located in Georgia.

GDOT reviewed the availability of DBEs that were on the bidders list, DBE directory and market statistics census data. In addition to GDOT listing there was an increased effort to register and certify DBEs from other state organizations, Governors Small Business Center, Minority and Women Business Organizations.

All pre-qualified firms contracts that GDOT awarded are included in the data base calculations. For a non-pre-qualified firm to be included in the pool of available firms, it must have received a contract from GDOT. The non pre-qualified contracts are those that are less than \$500,000.

All pre-qualified firms are assigned a "Factor Score" by GDOT. This factor score is used to determine the amount (or capacity) of work that the firm is capable of engaging in. As such, GDOT's pre-qualification process is also a process whereby the capacity of firms is determined. Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in the GDOT program;

As to the extent possible, data on employment, self-employment, education, training and union apprenticeship programs is collected to the extent such data can relate to the opportunities for DBEs to perform in the GDOT program.

The goal is adjusted for past DBE participation in all areas after controlling for capacity, (i.e. adjusted for characteristics that effect their overall contract impact which includes GDOT assigned pre-qualified capacity, ability factor score, age, product, location service area and DBE status) DBE's were not underutilized in subcontracting.

**5.02 Determining the Race and Gender Neutral and Race and Gender Conscious Portion of the Goal**

The logic and plan behind the race and gender neutral benchmark is to remove the specific GDOT DBE goal portion of overall DBE availability and utilization that is achieved in areas where there are no statistically significant disparities. The resulting percent is then a race and gender neutral benchmark. No goal recommendation resulting in utilization. GDOT must determine the dollar value of awards that DBEs would receive in contracting areas that do not have statistically disparities that would derived from the race and gender neutral benchmark.

This amount is then expressed as a proportion of all awards that DBEs might be expected to receive based on their characteristics. This capacity percent is then expressed as a percentage of the DBE goal.

To determine the portion of the goal that is race and gender neutral, we examined the amount of utilization that was achieved by DBE's on all prime contracts without a goal recommendation, even though sub contracting and DBE opportunities exist.

Finally, GDOT considers the data submitted by the Contractors records for the previous twelve (12) months. The Contractors data included both the race/gender neutral and race/gender conscious percentages.

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

### **5.03 Calculation of the DBE Capacity Benchmark**

The calculation of DBE capacity is designed to determine the total volume of contracting that DBE's are capable of engaging in on an annual basis. Below explains in detail how these calculations are estimated by GDOT.

The total value of contractual services that are procured by GDOT divided by the amount that went to prime construction contractors. Gather the amount that was net of subcontracts that were awarded by the prime contractor.

To obtain the proportion of available firms in the three areas that are DBEs. GDOT takes the availability measure derived from two sources: (1) All firms that are pre-qualified as prime contractors, professional consultants or subcontractors; and (2) All firms that received prime contracts, subcontracts or professional consultant awards.

The capacity measure gives the proportion of the total value of GDOT contracting that DBEs are capable of performing. The capacity percentages are derived by the value of awards received by prime contractors on the firm characteristics of those prime contractors. These characteristics include their GDOT assigned pre-qualified capacity, ability factor score, age, product and service area and DBE status. The value of awards that firms could be expected to receive given their characteristics.

Once GDOT derives the amount that DBEs could be expected to receive given their characteristics, this amount is a percent of the value of awards all firms might be expected to receive. The same procedure is then followed for subcontractors and professional consultants.

The next step is to be able to derive one overall goal from the three capacity figures. To derive one overall capacity benchmark it is assumed that the contribution to this benchmark from DBEs in each of the three areas should be adjusted to reflect the relative amount of total contracting taking place in the area. To do this GDOT weight the DBE capacity percentages. Then simply multiply the weights, by the capacity percentages. This weighted capacity gives the total percent that DBE utilization in prime contracting, subcontracting and professional consulting should comprise of all GDOT contracting.

#### **5.04. Contract Goals**

The following provisions apply to the use of contract goals:

- (1) GDOT will use contract goals on those federally-assisted contracts that have subcontracting possibilities.
- (2) GDOT will not set a contract goal on every federally-assisted contract. GDOT will not set each contract goal at the same percentage level as the overall 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 GDOT's overall goal, the contract goals will be set so that the cumulative result meets the overall goal that can not be met through the use of race-neutral means.

- (3) To ensure that GDOT's DBE program continues to be narrowly tailored to overcome the effects of discrimination, GDOT will adjust its use of contract goals as deemed necessary. If, during the course of any year in which GDOT is using contract goals, it is determined that the overall goal will be exceeded, GDOT will examine the use of contract race neutral goals to the extent necessary to ensure compliance with 49 CFR Part 26.
- (4) If GDOT determines that it will fall short of its overall goal, then GDOT will make appropriate modifications in its use of race-neutral and/or race-conscious measures to allow it to meet the overall goal.
- (5) If the DBE participation GDOT has obtained by race-neutral means alone meets or exceeds its overall goals for two consecutive years, GDOT is not required to make a projection of the amount of its goal it can meet using such means in the next year. GDOT will continue using only race-neutral means to meet its overall goals unless and until it does not meet its overall goal for a year.
- (6) If GDOT obtains DBE participation that exceeds its overall goal in two consecutive years through the use of contract goals (i.e., not through the use of race-neutral means alone), it will reduce its use of contract goals proportionately in the following year.

In any year in which GDOT projects meeting part of its goal through race-neutral means and the remainder through contract goals, GDOT will maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. GDOT will report this data to the concerned operating administration.



**5.05 Means GDOT Will Use To Meet the DBE Overall Goal**

GDOT will meet a portion of its overall goal by using race-neutral means of facilitating DBE participation. Race-neutral DBE participation includes any portion of contract work a DBE wins as prime contract or subcontract through customary competitive procurement procedures and/or is awarded a subcontract on a prime contract that does not carry a DBE goal, or even if there is a DBE goal, wins a subcontract from a prime contractor that did not consider its DBE status in making the award. Contractor written notification to GDOT is recorded and is made part of the record. GDOT will use the following methods to meet the DBE goal:

- **Broader Advertisement Circulation**
- **Smaller Contracts**
- **Joint Venture Business Development**
- **Training - Supportive Services**
- **Prompt Payment Provision**
- **Bonding Assistance**
- **Mentor-protégé Programming**
- **Elimination of Retainage on Prime & Subs Contractors**
- **Outreach**

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

- 1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate DBE, and other small businesses;
- 2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing, 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 by ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders/offerors; ensuring the dissemination to bidders/offerors 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) Ensuring distribution of the DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and
- 8) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

The GDOT has utilized the list below in addition to the items above as race and gender neutral activities:

- Smaller Contracts
- Broader Advertisement Circulation
- Joint Venture Business Development
- Training - Supportive Services
- Prompt Payment Provision
- Bonding Assistance
- Mentor-protégé Programming
- Elimination of Retainage on Prime & Subs Contractors
- Outreach

## 5.06

### Good Faith Efforts

GDOT's determination that a bidder/offeror has exercised good faith efforts in attempting to meet the DBE contract goal are done in accordance with 49 CFR Parts 26, Appendix A.

- (a) GDOT will take into consideration a bidders, offerors, and consultant's (hereinafter referred to as "bidder") good faith efforts when determining whether the bidder has attempted to meet the DBE contract goal. A determination of good faith efforts includes 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 does document adequate good faith efforts, GDOT will not deny award of the contract on the basis that the bidder failed to meet the goal.
- (b) In its solicitations for federally-assisted contracts for which a contract goal has been established, GDOT will require the following:
  - (1) Award of the contract will be conditioned on meeting the requirements of this section;
  - (2) All bidders will be required to submit the following information to GDOT, at the time provided in paragraph (b)(3) of this section:
    - (i) The names and addresses of DBE firms that will participate in the contract;
    - (ii) A description of the work that each DBE will perform;
    - (iii) The dollar amount of the participation of each DBE firm participating;
    - (iv) Written documentation of the bidder's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;

- (v) Written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment; and
  - (vi) If the contract goal is not met, evidence of good faith efforts must be submitted in accordance with the contract specifications.
  - (vii) The bidder must present the information required by paragraph (b)(2) of this section by the close of business on the third working day following opening of the bid as a matter of bidder responsibility.
- (c) GDOT will make sure all information is complete, accurate and adequately documents the bidder's good faith efforts before committing itself to the performance of the contract by the bidder.

**5.07 Reconsideration Official [49 CFR 26.53(d) (2)]**

If GDOT determines that the apparent successful bidder has failed to meet the requirements of Good faith effort, it will provide the bidder with an opportunity to request an administrative reconsideration. ANY REQUESTS FOR ADMINISTRATIVE RECONSIDERATION MUST BE RECEIVED WITHIN TEN BUSINESS DAYS OF GDOT'S LETTER and must be sent to the Deputy Commissioner, No. 2 Capitol Square, S.W., Atlanta, Georgia 30334.

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

- (3) The bidder will have the opportunity to meet in person with GDOT's reconsideration official(s) to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.
- (4) The evidence presented during the administrative reconsideration hearing will be reviewed de novo. The administrative officer or officers may consider newly admitted evidence when determining whether the bidder met the requirements.
- (5) The administrative officer or officers will send the bidder a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.
- (6) The result of the reconsideration process is final and is not administratively appealable to the United States Department of Transportation.

## **5.08**

### **Termination of DBE Contractor**

- (a) A prime contractor is prohibited from terminating for convenience a DBE subcontractor listed in response to DBE substitutions of this DBE Program Plan and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without GDOT's prior written consent.
- (b) When a DBE subcontractor is terminated, or fails to complete its work on the contract for any reason, a prime contractor shall make good faith efforts to find another DBE subcontractor to substitute for the original DBE.
- (c) These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal GDOT established for the procurement.

- (d) Failure to comply with the requirements of this section will result in administrative remedies, as needed.

**5.09 Method By Which DBE Participation Is Counted Toward Goals**

When a DBE participates in a contract, GDOT will 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 federally-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.
- (a) 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.

- (b) 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.
  - (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.
  - (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, GDOT will 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 the Office of Equal Employment Opportunities to rebut this presumption.
  - (5) GDOT's decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to USDOT.

- (c) The following factors will be used in determining whether a DBE trucking company is performing a commercially useful function:
- (1) The DBE must be responsible for the management and supervision of the entire trucking operation for which 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) **\*\*\*NOTE TO TRUCKING ISSUE\*\*\*** 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 an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.
  - (6) For purposes of this paragraph (d), a lease must indicate 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) GDOT will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:
  - (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)(i), 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, GDOT will 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).
- (D) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, GDOT will 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. GDOT will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.
- (E) If a firm is not currently certified as a DBE at the time of the execution of the contract, GDOT will not count the firm's participation toward any DBE goals.
- (F) GDOT will not count the participation of a DBE subcontractor toward the prime contractor's DBE achievements until the amount being counted toward the goal has been paid to the DBE.
- (G) No DBE participation will be counted that is not in compliance with Special Provision entitled "Criteria for Acceptability", which shall be included as part of the contract or with any provisions included in 49 CFR Part 26.
- (H) If the contract amount overruns, the contractor will not be required to increase the dollar amount of DBE participation. If the contract amount under-runs, the contractor will not be allowed to decrease the dollar amount of DBE participation except when the DBE subcontracted items themselves under-run.

## **VI. DISADVANTAGED BUSINESS ENTERPRISE UNIFIED CERTIFICATION PROGRAM**

### 6.01 SECTION I - GENERAL

#### A. *Purpose*

In accordance with the Federal Department of Transportation's regulation 49 CFR Part 26, Subpart E, GEORGIA UNIFIED CERTIFICATION PROGRAM or GUCP will consist of the (Georgia Department of Transportation [GDOT] and the Metropolitan Atlanta Rapid Transit Authority [MARTA]) have developed a Disadvantaged Business Enterprise Certification Procedure. The purpose of this procedure is to ensure that only firms that meet the eligibility standards for certification are classified as DBE(s). In carrying out this procedure, the GUCP will review information, facts and circumstances that lead to the discernment of whether a firm is an independent business that is owned and controlled by minorities, females and/or persons who are socially and economically disadvantaged. Several ancillary factors that will be considered in support of this process will entail whether an applicant firm simultaneously meets the small business size standard of the Federal Department of Transportation and the Small Business Administration, while carrying out a commercially useful purpose. This information in tandem with the owner's Personal Net Worth being less than \$750,000 will constitute the minimum threshold requirements that an applicant firm will have to address.

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

#### B. Statutory Authority

1. **Title VI of the Civil Rights Act of 1964, 42 U.S.C. 2000d et seq.**
2. **Participation by Disadvantaged Business Enterprises in Department of Transportation Programs, 49 CFR Part 23 and 26.**

## A. Definitions

1. **GUCP** is defined as the State of Georgia Unified Certification Program consisting of the State of Georgia Department of Transportation acting as lead agencies with the assistance from the Metropolitan Atlanta Rapid Transit Authority to administer this program, and includes Department of Transportation recipients with the Federal Aviation Administration, Federal Highway Administration and the Federal Transit Administration. The purpose of the SGUCP is to streamline the certification process. This streamline process is designed to reduce administrative costs and to provide more opportunities for small businesses owned and controlled by socially and economically disadvantaged individuals.
2. **Affiliation** has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121. (a) 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. (b) 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.
3. **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.
4. **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.).

5. **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. Contractor means one who participates, through a contract or subcontract (at any tier), in a DOT-assisted highway, transit, or airport program.
6. **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).
7. **Disadvantaged Business Enterprise** or DBE means a for-profit small business concern-- (a) 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 (b) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
8. **Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.
9. **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.
10. **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.

11. **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.
12. **An Personal Financial Statement** 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.
13. **Primary industry classification** means the four digit Standard Industrial Classification (SIC) code designation, which best describes the primary business of a firm. The SIC code designations are described in the Standard Industry Classification Manual. As the North American Industrial Classification System (NAICS) replaces the SIC system, references to SIC codes and the SIC Manual are deemed to refer to the NAICS manual and applicable codes. The SIC Manual and the NAICS Manual are available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its web site ([www.ntis.gov/naics](http://www.ntis.gov/naics)).
14. **Principal place of business** means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for DBE program purposes.
15. **Small Business Administration or SBA** means the United States Small Business Administration.

16. **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 Sec. 26.65(b) of 49 CFR Part 26.
17. **Socially and economically disadvantaged individual** means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is-- (a) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. (1) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged: (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa; (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race; (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians; (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kirbati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong; (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka; (vi) Women; (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
18. **Tribally-owned concern** means any concern at least 51 percent owned by an Indian tribe as defined in this section.

#### D. Applicability

This procedure is applicable to any firm that wants to apply for DBE certification or re-certification with the GUCP. It also applies to those firms that file Affirmations of No Change on an annual basis. Any firm requesting certification under the auspices of reciprocity will also be subjected to these procedures at the discretion of the GUCP.

#### E. Responsibilities

The GUCP is responsible for the manner in which the certification procedure is applied and complied with by each recipient, its sub-recipients, contractors and subcontractors.

The Department of Transportation and MARTA are responsible for ensuring that all recipients meets the standards, criteria and guidelines governing the certification procedure as mandated by the Federal Department of Transportation. It oversees GUCP certification process, the maintenance of confidentiality for certification files, timely processing of applications, certification determinations, denials and appeals.

Georgia Department of Transportation will be the clearinghouse for the method and format of data necessary for detailing the certification status issue, DBE Directory development and maintaining communication between the partners. Other agencies could then be granted database access through the Internet. GDOT will make updates, revisions and additions as appropriate. The database could generate notices to each agency, create the DBE Directory.

GDOT would be the database manager and would continue to work with their personnel to develop the common database, including, agency's specific reporting needs and download capabilities.



## **6.02 SECTION II - CERTIFICATION REQUIREMENTS**

In order to be a Disadvantaged Business Enterprise (DBE), a firm must be a small business concern as defined by the Small Business Administration (SBA) in 13 CFR 121. The GUCP will review a firm's averaged gross receipts and personal tax returns for three years and measure it against the North American Industry Classification System (NAICS) codes under which the applicant firm operates. If the applicant firm meets these small business measures, it will then be held up against the Federal Department of Transportation's small business size standard of \$17.4 Million in averaged gross receipts over a three-year period. These measures, in tandem with a firm's declaration of social disadvantage and proof that the owner's Personal Financial Statement is less than \$750,000, must be reflected on Appendix A. Appendix A is the GUCP's Personal Financial Statement for Disadvantaged Business Enterprise Certification, which must be completed in total, with required attachments, and notarized.

If any one of the above noted threshold requirements is not met or satisfied, the GUCP can not and will not continue the review of a firm's certification application. If a firm meets all of the threshold requirements as noted, it will have to submit an Application for Disadvantaged Business Enterprise (DBE) Certification (Appendix B). This form must be completed in total, signed and notarized. The information on this form, and in any attachments, is vital to the GUCP's evaluation and review process because it constitutes the body of data needed as a prerequisite to conduct an on-site review.

## **A. Certification Standards**

### **1. Burdens of Proof**

Any firm seeking DBE certification from the **GUCP** shall have the burden of demonstrating, by a preponderance of the evidence, that it meets the requirements of 49 CFR Part 26 concerning group membership or individual disadvantage, business size, ownership, and control. In this connection, the **GUCP** will rebuttably presume that members of the designated groups identified in Section I., C-16 of this procedure are socially and economically disadvantaged. This means that they may not have the burden of proving to the **GUCP** that they are socially and economically disadvantaged. However, applicant firms do have the obligation to provide the **GUCP** with information concerning their economic disadvantage. Individuals who are not presumed to be socially and economically disadvantaged, and individuals, concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to the **GUCP**, by a preponderance of the evidence, that they are socially and economically disadvantaged. The **GUCP** will have the sole responsibility of making any and all determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage by considering all the facts in the record. The facts that will be reviewed governing group membership shall include, but not be limited to, the following:

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

## 2. Business Size Determinations

In determining whether a firm is an eligible DBE from the vantage point of size standard, the **GUCP** will measure a firm, including its affiliates, against the SBA business size standard(s) found in 13 CFR 121 appropriate to the types of work, as defined by the 2002 North American Industry Classification System (NAICS) codes, the firm seeks to perform on contracts.

Even if it meets the requirements of the SBA, **GUCP** will not consider a firm as an eligible DBE if it has had average annual gross receipts over the last three years in excess of \$17.4 million. The latter is the amount that the Secretary adjusts for inflation from time to time.

## 3. Determination of Social and Economic Disadvantage

**The GUCP will 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. To validate this presumption, we will require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged. Each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, will also be required to submit a signed, notarized statement of Personal Financial Statement, with appropriate supporting documentation. These two points of information must be noted solely on the **GUCP's** Statement of personal financial statement for Disadvantaged Business Enterprise Certification (Appendix A).

For those persons claiming to be an Alaskan Native, the **GUCP** anticipates that their personal net worth statements will include assets and income from sources other than an Alaska Native Corporation and exclude any of the following which the individual receives from any Alaska Native Corporation:

- Cash (including cash dividends on stock received from an ANC) to the extent that it does not, in the aggregate, exceed \$2,000 per individual per annum.

- Stock (including stock issued or distributed by an ANC as a dividend or distribution on stock.
- A partnership interest and or an interest in land (including land or an interest in land received from an ANC as a dividend or distribution on stock)
- An interest in a settlement trust.

The **GUCP** will review all information submitted in this regard to determine if a rebuttal of presumption of disadvantage is required. If an individual's personal financial statement exceeds \$750,000, said individual's presumption of economic disadvantage is automatically rebutted and their application for certification will be denied.

Should the **GUCP** 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, it will follow the procedure required for removal of a DBE's eligibility mentioned later in this procedure. These basic steps will apply to all firms including those that are recognized by the SBA under the 8(a) or Small and Disadvantaged Business (SDB) program. THE **GUCP** will not automatically grant 8(a) or SDB approved firm's automatic certification.

#### **4. Individual Determinations of Social and Economic Disadvantage.**

The **GUCP** will entertain applications for certifications from firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged. We will consider each said application on a case-by-case basis to determine whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to us, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal financial statement exceeds \$750,000, as reflected on the **GUCP's** Statement of Personal Net Worth form, shall not be deemed to be economically disadvantaged. In addition, the applicants must provide sufficient information to permit determinations of both ownership and control.

## 5. Determinations of Ownership

In determining whether the socially and economically disadvantaged participants in a firm own the firm, the **GUCP** will consider all the facts in the record, viewed as a whole. Accordingly, our review will entail an analysis of a number of factors that have historically proven to be definitive and accurate measures of ownership matters. Since new and innovative legal forms of business are apt to be encountered, the enumeration of elements to be considered should be viewed as basic and not necessarily all-inclusive. This leaves the **GUCP** with leeway to institute additional measures for cases that may require the acquisition of non-traditional bases of information because of unusual circumstances. The body of information that will be examined and used as a guide for evaluation purposes is as follows:

- a. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. For a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals.  
Such ownership must be reflected in the firm's partnership agreement. Limited liability companies must have at least 51 percent of each class of member interest owned by socially and economically disadvantaged individuals.
- b. A firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

- c. Securities that constitute ownership of a firm shall be held directly by disadvantaged persons. No securities or assets held in trust, or by any guardian for a minor, shall be considered as held by disadvantaged persons in determining the ownership of a firm.

However, securities or assets held in trust shall be regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if-- (1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or (2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust will be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

- d. The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. The **GUCP** will view insufficient contributions to include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business will not render a firm ineligible, even if the debtor's ownership interest is security for the loan.
- e. The **GUCP** will apply the following requirements to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership: (1) The owner's expertise must be-- (i) In a specialized field; (ii) Of outstanding quality; (iii) In areas critical to the firm's operations; (iv) Indispensable to the firm's potential success; (v) Specific to the type of work the firm performs; and (vi) Documented in the records of the firm.  
These records must clearly show the contribution of expertise and its value to the firm. (2) The individual whose expertise is relied upon must have a significant financial investment in the firm.

- f. The **GUCP** will 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.

On the other hand, the **GUCP** will presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is-- (i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm; (ii) Involved in the same or a similar line of business; or (iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to The **GUCP**, by clear and convincing evidence, that-- (i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and (ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

- g. When marital assets (other than the assets of the business in question) held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, The **GUCP** will 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. The **GUCP** will not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

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

- h. While the **GUCP** will acknowledge a socially and economically disadvantaged individual's acquisition of his or her ownership interest as the result of a gift or transfer without adequate consideration, it will examine said matters closely. The same will apply to those situations in which the co-signature of a spouse is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents. Continuing in this vein, particularly close and careful scrutiny will also be applied to the ownership of a firm or its assets that are transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual.

## **6. Determinations Concerning Control**

In order to be an eligible DBE, a firm must be both owned and controlled by socially and economically disadvantaged individuals. This dictates that even if an individual clearly meets the standards for ownership, he/she still has to prove that they also control their firm. Since ownership and control issues are often intertwined, The **GUCP** will use the same scrutiny oriented approach used for examining ownership as it reviews control issues. The body of information that will be examined and used as a guide for evaluation purposes is as follows:

- a. Only an independent business may be certified as a DBE. The **GUCP** considers an independent business as one whose viability is not dependent on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, the **GUCP** will scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.



We will also 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. Further, we will 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.

The aforementioned will also be reviewed from the vantage point of whether the consistency of relationships between the potential DBE and non-DBE firms conform with normal industry practice.

- b. DBE firm can 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.
  
- c. 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. This is not intended to preclude individuals who are not socially and economically disadvantaged from being involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors.

Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

- d. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals.

Such delegations of the **GUCP** will be examined by the **GUCP** to determine if they are revocable because the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such **GUCP** is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that **GUCP** can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

- e. The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners will not be required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, The **GUCP** will not consider expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm as sufficient to demonstrate control. Where state or local law requires 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, the **GUCP** will not deny certification solely on the ground that the person lacks the license or credential. However, we will take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

- f. The **GUCP** will 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 offered by the firm. In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, we will consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved with the firm and continues to receive greater compensation than the disadvantaged individual.

- g. 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.**

- h. A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, the **GUCP** will make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as we do in other situations, without regard to whether or not the other persons are immediate family members. If we cannot determine that the socially and economically disadvantaged owners--as distinct from the family as a whole--control the firm, then the socially and economically disadvantaged owners will have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- i. Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm will have to demonstrate to us, by clear and convincing evidence, that: (1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and (2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.
- j. The **GUCP** will consider in all cases whether the applicant firm owns, rents or leases equipment necessary to perform its work. This will be done within the context of determining what is normal industry practice. Special attention will be given to those rental, lease or purchase agreement that involve a relationship with a prime contractor or other party that compromises the independence of the firm.
- k. The **GUCP** will consider a firm for certification in only the 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 will need to demonstrate to us that it is socially and economically disadvantaged owners are able to control the firm with respect to that type of work.

The **GUCP**, in this situation, will not require that the firm be re-certified or submit a new application for certification, but will verify the disadvantaged owner's control of the firm in the additional type of work.

1. A business operating under a franchise or license agreement will have to meet all necessary requirements applicable to its defined legal form and the franchiser or licensor can not be affiliated with the franchisee or licensee.

In determining whether affiliation exists, the **GUCP** will consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, to ensure that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. In addition, issues arising through affiliation such as common management or excessive restrictions on the sale or transfer of the franchise interest or license will also be explored.

- m. In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability. Any said specific written concurrence would be obtained for the record to determine if there are any provisions that are not retractable by the socially and economically disadvantaged partners.
- n. The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company will not necessarily preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as, ultimate responsibility for wage and tax obligations related to the employees.

The **GUCP** will review any and all prevailing employee leasing agreements within the parameters of industry practice, good business sense, and operational control of the firm and affiliation of the applicant firm with the employee-leasing venture.

- o. Other generic considerations that will be reviewed as an integral part of the certification determination process will include:
  1. 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.
  2. Whether an applicant firm is for profit. Only firms organized for profit may be eligible DBEs.
  3. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.
  4. An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. 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. 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, **GUCP** will certify the subsidiary if it otherwise meets all mandated certification requirements. 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. The **GUCP** will certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals.

## 7. On Site Reviews

The GUCP will require the performance of an on-site to the offices of the firm requesting certification. The GUCP must interview the principal officers of the firm and review their résumés and/or work histories. The GUCP 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 investigation in the jurisdiction or local area.

### SECTION VII -

#### 7.01 CERTIFICATION PROCEDURES

##### A. Uniform Certification Program

The Georgia Department of Transportation and The Metropolitan Atlanta Rapid Transit Authority have entered into a State of Georgia Unified Certification Program or **GUCP** agreement, the above noted certification standards will be used to review all applications for certification. All applications, affirmation of no change forms and personal financial statements for certification will be sent to Georgia DOT. Each item will be logged in and date stamped for data management by the GDOT Administrator.

The GDOT Liaison Officer or Administrator will inform MARTA and the Districts of pending certification applications for processing. All applications will be transmitted to each location using color code pouches by couriers on a daily or as needed basis.

In responding to requests for information concerning any aspect of the DBE program, the **GUCP** complies with the provisions of the Federal Freedom of Information and Privacy Act (5 U.S.C. 552 and 552a). The **GUCP** may make available to the public any information concerning the DBE program and certification will be release of which is not prohibited by Federal Law. The **GUCP** will not release information that may be reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. All requests must be filed with the GDOT. MARTA will be apprised of any requests and asked to provide input on how to respond, as needed.

This will be done prior to said Freedom of Information requests being forwarded to the legal staff of the Georgia DOT for review.

The totality of the information collected will be measured against data obtained from the DBE on-site review of an applicant firm, as well as, their business location and job site visit. This means that we will have solicited, received and analyzed a significant amount of information gained from the Disadvantaged Business Enterprise Certification Affidavit, as well as supplemental data, before actually conducting the on-site review. This will provide us the advantage of actually knowing detailed data about a firm before we meet with and interview the socially and economically disadvantaged principals, who as the predominant owners, that control the firm. The type of data that will be reviewed prior to performing an on-site review will include:

1. Work experience résumés (including places of ownership/employment with corresponding dates), for all owners and officers of your firm
2. Personal Financial Statement
3. Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status
4. Your firm's tax returns (gross receipts) and all related schedules for the past three years
5. Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- 6. Your firm's signed loans agreements, security agreements, and bonding forms**
7. Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
8. List of equipment lease and signed lease agreements
9. List of construction equipment and/or vehicles owned and titles/proof of ownership
- 10 Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years.
11. Year-end balance sheets and income statements for the past three years (or life of firm, if less than three years); a new business must provide a current balance sheet
12. All relevant licenses, license renewal forms, permits, and haul authority forms
13. DBE and SBA 8(a) or SDB certifications, denials, and/or de-certifications, if applicable
14. Bank authorization and signatory cards
15. Schedule of salaries (or other compensation or remuneration) paid to all officers, managers, owners, and/or directors of the firm



16. Trust agreements held by any owner claiming disadvantaged status, if any.

The extensiveness of this information is used to plan the impending on-site review of an applicant firm at their business site. While the above information is extremely helpful in getting an overall picture of a firm, it does not eliminate the performance of an on-site review, which is a detailed, independent and analytical examination of a certification applicant. This approach is used so that we do not inhibit the follow up and exploration of issues that may come up during the on-site review, which were not covered in any previously submitted documentation. Given the above, the results of the DBE on-site review will be summarized in a written narrative report and will follow the chronology of the questions outlined in Appendix C. Appendix C is a list of questions that has been formulated, based on historical experiences, to facilitate the retrieval of supplemental information needed for certification determinations. The types of things that are noted in Appendix C, which are asked of the minority principals, include, but are not limited to, the following:

How did you start this business and in what year?  
Explain how past experiences enable you to run your business?  
How did you capitalize your firm?  
Does your firm share resources with any other firm?  
What equipment does your firm owns and where is it stored?  
What business and professional licenses are held by your firm?  
Explain and describe the negotiation process for banking, bonding, loans and letters of credit  
How do you market your firm?  
How are you involved in bidding and estimating proposals?  
What are your day-to-day activities  
What are the day-to-day activities of other supervisors and management staff?  
Explain the Process for monitoring contracts

The resulting on-site review and visit to job site report are then made an integral part of the applicant's file and is reviewed as a significant segment of the whole.

It will reflect the interview comments of the socially and economically disadvantaged individual(s) that have 51% or more of the ownership and control of the firm in question.

This report, in tandem with the certification standards data that has been gathered, will be organized in a ordered file that supports any DBE status recommendation put forth.

- Cover memorandum, which summarizes the facts and denotes a recommendation for certification, re-certification, and denial of certification or determination to be held in abeyance. The cover memorandum will also denote the SIC code(s) under which they are being certified, applicable small business size standards, average gross receipts over the last three years and a firm's employer identification number.
- DBE Certification or Re-certification affidavit and Personal Financial Statement.
- Three years financial statement, balance sheet/income statements and/or profit and loss statements.
- Prior three years company tax returns and personal tax returns (including all schedules).
- Bank signature card and cancelled checks (front and back) written for business expenses.
- Resumes of company principals and all key personnel.
- City, county, state and/or professional licenses, as required.
- Firm brochure and business cards of socially and economically disadvantaged principals.
- Business organizational and operational documents (i.e., articles of incorporation, by laws, partnership agreements, stockholder agreements, management agreements, buy out rights, profit sharing agreements, etc.).
- Stock certificates, ownership options, applicable ownership acquisition ledgers, etc.
- Proof of capital invested, proof of stock purchase, etc.
- Equipment rental-lease or purchase agreements.
- Copies of third party agreements such as business site rental, lease or purchase agreements, past and present contracts, loans, letters of credit, lines of credit, trust agreements, management service agreements and the like.
- Proof of disadvantaged status, as required.

A certification file, as referenced above, will be developed for each applicant firm. It will be submitted to the **GUCP** Administrator for review and concurrence. Upon the concurrence of the Administrator, an approval memo will be attached and data on the firm will be entered into the DBE computerized data bank maintained by the **GUCP** and a three-year certification letter can be developed for the signature of the Administrator and GDOT EEO Division Director.

If the recommendation is for denial by the Administrator, then a letter is generated to the firm as to the reasons why the denial was made. In the notification of denial the applicant is advised of their appeal rights to the Commissioner of the GDOT and the USDOT, if applicable. The firm has Ten (10) days from the date of notification to appeals to the Commissioner, 2 Capitol Square, Suite 102, Atlanta, Georgia 30334. Applicant firms may request an opportunity to make a verbal presentation to the **GUCP** Certification Appeals Board, which consist of 2 members from GDOT and 1 member from MARTA.. The file are sent to the GUCP Review panel. The firm's entire certification file is forwarded to the **GUCP** review panel for final resolution. The **GUCP** review panel reviews the file to ensure that all aspects of the United States Department of Transportation's DBE regulation has been adhered to. In addition, they also review the file to determine if there have been any inappropriate applications of any legal principles, laws or interpretations of the facts.

The **GUCP** review panel's decision is final as far as the **GUCP** is concerned and subsequent actions are initiated based on their finding. This means that if they concur in the denial, a letter detailing the basis for the denial is sent to the applicant firm. Firms denied certification would not be able to reapply for certification for one year from the date of the denial. The firm then has 90 days to appeal the decision the USDOT Department of Transportation, Office of Civil Rights, 400 7th Street, SW, Room 2401, Washington, DC 20590.. If they overturn the denial, the firm is certified without any question following the procedure denoted in the paragraph immediately above, where applicable.

In all instances, any proprietary and confidential information obtained from a firm that applies for certification with the **GUCP** will be safeguarded from disclosure to unauthorized persons. This practice will extend to and cover all information submitted by a firm for re-certification purposes and/or to acknowledge An Affirmation of No Change. Affirmations of No Change will have to be submitted by applicant firms annually and they will address any change in circumstances affecting a firm's ability to meet size, disadvantaged status, ownership or control requirements, or any material change in the information provided in applicant's original application form. Applicant firms will be required to attach a current financial statement, most recent tax return, current business license and other supporting documentation which describes in detail the nature of specified material changes.

The Affirmation of No Change will take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths.

The **GUCP** will send the Affirmation of No Change form to all affected parties at least One Month prior to their anniversary date of certification. It will be the responsibility of each firm to submit this information to us every year before or on the anniversary of the date of their certification.

**A. 7.02 Removal of DBE Eligibility**

**GUCP** has responsibility for removing a DBE's eligibility, when necessary. As a result, the **GUCP** will entertain written complaints from anyone who specifically delineates alleged reasons why a currently certified firm is ineligible. **Such complaints must be addressed to the GEORGIA UNIFIED CERTIFICATION PROGRAM, Commissioner, Georgia Department of Transportation.** In this connection, the **GUCP** will treat the identities of complainants with confidentiality as it re-examines its records concerning the firm, any material provided by the firm and the complainant, and other available information. In addition, the **GUCP** will request additional information from the firm or conduct any other investigation that it deems necessary. If the results of the review reveal that there is reasonable cause to believe that the firm is ineligible, we will provide written notice to the firm that we propose to find the firm ineligible, setting forth the reasons for the proposed determination. Should no reasonable cause exist for removal of DBE eligibility, we will notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause will specifically reference the evidence in the record on which each reason is based. The re-examination of a firm's eligibility and the rendering of a determination will be completed as soon as possible.

Because it is anticipated that the **GUCP** and/or the Federal Department of Transportation may initiate independent removal of DBE eligibility proceedings for given reasons, the **GUCP** will immediately commence and prosecute a proceeding to remove eligibility as provided in the paragraph noted above, inclusive of an informal hearing.

In such a proceeding, the **GUCP** will bear the burden of proving, by a preponderance of the evidence, that the firm does not meet required certification standards. We will maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing.

If there is an appeal to DOT, the **GUCP** will provide a transcript of the hearing to DOT and, on request, to the firm. The **GUCP** will retain the original record of the hearing and charge the firm only for the cost of copying the record.

If the firm elects to present information and arguments in writing, without going to a hearing, the **GUCP** will still bear the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as we would during a hearing.

Given that these proceedings need to be totally objective, The **GUCP** will ensure that the hearing personnel did not take part in any actions leading to or seeking the removal of the affected firm's DBE eligibility. Under no circumstances will hearing personnel be subject to direction from the office or personnel who did take part in these actions. However, the decision-makers will be individuals who are knowledgeable about the certification requirements of our DBE program and the United States Department of Transportation's DBE regulation. Their decisions to remove eligibility will not be based on a reinterpretation or changed opinion of information available to us at the time of a firm's original certification. Their decision will only be based on one or more of the following: (a) changes in the firm's circumstances since the certification of the firm by the **GUCP** that render the firm unable to meet the eligibility standards; (b) information or evidence not available to us at the time the firm was certified; (c) information that was concealed or misrepresented by the firm in previous certification actions by a recipient; (d) a change in the certification standards or requirements of the Department since we certified the firm; or (e) a documented finding that our determination to certify the firm was factually erroneous.

Following our decision, we will provide the affected firm written notice of the decision and the reasons for it, including specific references to data in the record. If the said determination is appealed to the United States Department of Transportation, The **GUCP** determination will maintain until it is overturned by DOT.

### **7.03 Third Party Challenges**

The GUCP will accept written complaints from any person, including GUCP partners, alleging that a currently certified firm is ineligible. The complainant must state specific reasons for ineligibility and submit any documentation in support of the complaint. The firm being challenged will be notified by the GUCP certifying member, in writing, of the challenge, the basic grounds, and the relevant regulations. The GUCP certifying member responsible for the certification shall thoroughly investigate the complaint, within a reasonable time, not to exceed 60 days.

The GUCP shall notify the DBE in writing, by certified mail, of the preliminary findings. If reasonable cause to remove certification eligibility is found, the GUCP will notify the complainant of the specific grounds and inform the firm of the right to appeal the preliminary finding to the GUCP.

The GUCP Hearing Board consisting of two members of GDOT and one from MARTA for all challenges to currently certified firms. This does not include denial of re-certifications or new certification requests.

The firm may request an appeal, in writing, of the intent to remove its certification eligibility within 10 days of the date of the notice. The request for appeal can be made to the investigating GUCP and state the firm's wishes to file a written appeal or appear in person.

The USDOT may notify the GUCP of reasonable cause to find a certified DBE firm to be ineligible and the GUCP shall immediately remove the certification eligibility of that firm.

### **7.04 Reciprocity - Standards and Procedures**

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

## **SECTION VIII RE-CERTIFICATION PROCEDURES**

### 8.01 A. PURPOSE

To establish guidelines which ensure consistency in the Re-certification of Disadvantaged Business Enterprise firms previously certified in The Georgia Unified Certification Program or (**GUCP**) which consist of the State Department of Transportation and Metropolitan Atlanta Rapid Transit Authority.

### B. RESPONSIBILITY

**The GUCP GDOT EEO Administrator will be responsible for sending out advance notices for re-certification to DBE firms.**

### C. AFFIRMATION OF NO CHANGE PROCEDURES

#### Re-Certification

#### **8.02 General**

The GUCP GDOT EEO Administrator reviews the DBE certification database at the end of each month to determine which previously certified DBE firms are scheduled for re-certification in the coming month. The firms will be given a 30-day advance notice that they need to submit an AONC and personal financial statement to the GUCP within forty-five days. If a DBE firm does not respond to the first request, a second request letter will be issued giving the firm 30 days to respond. If the DBE firm does not respond to the second request a "File Close" letter. A second request letter will be sent giving the firm 30 days to respond. If the firm does not respond, a third letter will be sent and the firm will be decertified according to 49 CFR part 26. 109 The file will be "Closed".

When the **GUCP** GDOT EEO Administrator receives a complete Re-Affirmation of No Change Package from a previously certified DBE firm, that package is assigned to the certifying agency for review and processing. The re-affirmation assignment is recorded by the Administrator.

The certifying member reviews complete re-certification package for the following:

- Completed DBE Affirmation of No Change Form
- Current Financial Statement
- Other documentation that reflects changes since the previous certification
- Requests for additional information needed for DBE certification

## **SECTION IX**

### **9.01 Unified Certification Disadvantaged Business Enterprise Directory**

The GUCP will be responsible for maintaining and publishing a Unified DBE Directory containing all the firms certified by the GUCP, including those from other states certified under the provisions of these procedures. All DBE Directories from counties, cities, and MARTA will be consolidated into one statewide directory.

All firms currently in these respective directories will be initially grand-fathered in. Upon re-certification, all firms on the list will be required to have an on-site visit, no exceptions. The Directory will be divided into three sections; contractors, consultants and suppliers. All firms will be categorized by the use of the North American Industry Classification System (NAICS) codes. GDOT will provide access, electronically, to the public and GUCP partners for review and printing from a read-only format.

### **9.02 Airport Concessionaires**

The GUCP will confer on any airport concessionaires that opt to apply for DBE certification. The airport concessionaire will be required to submit all information of a DBE applicant except a Personal Financial Statement. All other requirements will be applicable and will have to be met as defined in 49 CFR Parts 23 and 26 with the City of Atlanta Contract Compliance Office.



### **9.03 Home State On-Site Reviews**

In order for an out of state firm to be considered for DBE certification by the Georgia Unified Certification Program, said firm must be certified by their home state. The GUCP will contact the DBE applicant's home state UCP and solicit documentation, on-site and job site review reports and other information as needed to expedite a firm's certification consideration. The GUCP reserves the right to request more information, on-site and job site review data from an applicant beyond what is in their home state review file, if required.

## **Section X DBE Program Complaint Policy and Procedure**

### **10.01 Complaint Policy**

It is the policy of GDOT to investigate any and all submitted complaints from DBE's, Non-DBE's, Contractors and consultants who believe they have been unlawfully discriminated in their contract obligation within a federally funded project for business or employment as a result of their race, age, disability, sex, sexual harassment, color, religion, national origin, political opinions or affiliation may file and process a complaint without fear of unlawful discrimination or retaliation.

#### **I. Definitions**

- A. "Complaint" means a claim by an DBE's, Non-DBE's, Contractors and Consultants that the employee has been unlawfully discriminated against in a manner described in the Policy.
- B. "Filing" is the submitting by the employee of a complaint form to the appropriate E.O. Program .
- C. "Commissioner" means the Commissioner of the Department of Transportation.
- D. "E.O. Division Director is responsible for the Department of the Transportation EEO Programs.

- E. "E.O. Administrator" is the Equal Opportunity Administrator of the Office.
- F. "E.O. Officer" is the Equal Opportunity Officer of the District.

## II. Eligibility

All Department of Transportation DBE's, Non-DBE's, Contractors and Consultants are eligible to file a complaint alleging unlawful discrimination as provided for in this procedure except as follows:

- A. Compliants who have been terminated and have specific rights of appeal under the DBE Program
- B. Contractors who are seeking relief for the complaint through other administrative or judicial procedures.

## III. General Provisions

### A. Forfeiture of Complaint Rights

If the complainant fails to proceed within 180 days, the time limits set forth for any step of the complaint procedure, it shall constitute a waiver their rights to proceed further under this procedure unless an extension is granted by the Commissioner or his designee.

### B. Management's Obligation to Respond

If any official in the complaint procedure fails to render a decision within the time limits set forth in any step of this complaint procedure, the complainant will have 180 days to proceed to the next step in this procedure. This 90 day period shall begin the day following the date on which the official's time for decision expired.

### C. Assistance in Processing

In no case shall the staff assigned to investigate the complaint assist any employee or be a party to the complainant. In such cases of conflict, the District Engineer or Office Head should recommend a replacement contact.

The E.O. Division Director or Administrator shall have authority to resolve any dispute regarding reasonable and necessary time for processing a complaint.

D. Withdrawal of the Complaint

At the sole discretion of the complainant, a complaint may be voluntarily withdrawn at any point in the procedure. The complaint shall be considered terminated and processing shall end.

E. Group Complaint

If two or more complaints are registered on a common issue they may submit a group complaint, indicating not more than two (2) participating complainants as spokespersons for the group. The filing of a group complaint eliminates the right of a complainant to appeal that complaint on an individual basis. The Equal Opportunity Division Director or his designee may consolidate (a) separate complaints filed by two or more employees complainant regarding the same issues or (b) multiple complaints, independent of their relatedness, filed by the same contractor.

F. Emergency Provisions

The Commissioner may suspend the complaint in whole or part for eligible standard or Department procedures.

G. Complaint Review Officials Pool

The E. O. Division Director or Administrator shall select a Review Official to hear the Complaint complaint. District Review Officials may hear complaints filed by contractors that work in the same districts as the Review Official.

**10.02 Complaint Procedures**

A Complaint must be filed within 180 days of the occurrence upon which the complaint is founded, or within 180 days of the date the complainant became aware, or should have become aware, of the problem through the exercise of reasonable diligence.

The Complaint shall contain a statement of the issue involved; how the complainant's has been unfavorably affected; the relief sought; and the date(s), if known, that the incidents or violations occurred.

If the complaint involves interpretation or application of rule or policy, the complaint shall identify the rule or policy at issue and describe the manner in which it was erroneously, arbitrarily, or capriciously interpreted or applied.

#### Equal Opportunity Office Response

Attempt to resolve the issues by facilitating an exchange of information between the parties, clarifying and/or interpreting rules or policies or exploring alternative resolutions. Efforts by E.O. Office staff to resolve the issue may include, among other activities, review of documents and interviews with the complainant, the contractors, or other parties possibly having knowledge pertinent to the complaint to identify, investigate and review facts and issues germane to the complaint. E.O. staff may meet with parties to the complaint individually and/or in a group in attempting to resolve the issues. If, in the view of the E.O. Division Director or Administrator, any party is uncooperative at this step, the E.O. Division Director or Administrator may withdraw the complaint from further processing and proceed directly to submission of a recommendation to the Commissioner for final action.

#### Unable to Resolve

If the E.O. Office is unable to resolve the issues within 180 days or if a satisfactory resolution does not result from the dispute resolution, the parties shall be notified. The matter may be referred to Legal Affairs for further handling.

The Commissioner shall review the findings and recommendations(s) of the DOT.

## SECTION XI

## COMPLIANCE AND ENFORCEMENT

### 11.01 Compliance with Title VI of the Civil Rights Act of 1964 for Federal-Aid Contracts

During the performance of Contractual agreements, the Contractor(s) or Consultant(s), its assignees and successors in interest (hereinafter referred to as the "Contractor"), agrees as follows:

- (a) Compliance with Regulations: The Contractor will comply with GDOT's regulations relative to nondiscrimination in Federally-assisted programs of the Department of Transportation (Title 49, Code of Federal Regulations, Part 21, hereinafter referred to as the "Regulations"), which are herein incorporated by reference and made part of this Contract.
- (b) Nondiscrimination: The Contractor, with regard to the work performed by it afterward and prior to completion of the contract work, will not discriminate on the ground of race, color, sex, or national origin in the selection and retention of subcontractors including procurements of materials and leases of equipment.
- (c) The Contractor will not participate, either directly or indirectly, in the discrimination prohibited by Section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the Regulations. In addition, the Contractor will not participate, either directly or indirectly, in discrimination prohibited by 23 CFR 710.405(b).
- (d) Sanction for Noncompliance:
  - (1) In the event the Contractor's noncompliance with the nondiscrimination provisions of this Contract, GDOT shall impose such Contract sanctions as it or the Federal Highway Administration may determine to be appropriate, including, but not limited to:

- (h) withholding of payments to the Contractors under the Contract until the Contractor complies, and/or
  - (ii) cancellation, termination or suspension of the Contract, in whole or in part.
- (2) In accordance with C.F.R. Section 26.103, any person that thinks GDOT is not in compliance with the provisions of this program may file a complaint with the United States Department of Transportation, Office of Civil Rights, 400 7<sup>th</sup> Street, S.W., Room 2401, Washington, DC 20590.
- (e) Incorporation of Provisions: The Contractor will include the provisions of paragraphs (a) through (d) of this section in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, orders or instruction issued pursuant thereto. The Contractor will take such action with respect to any subcontract or procurement as GDOT or the Federal Highway Administration may direct as means of enforcing such provisions including sanctions for noncompliance. Provided, however, that in the event a Contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the Contractor may request the State to enter into such litigation to protect the interests of the State, and, in addition, the Contractor may request the United States to enter into such litigation to protect the interest of the United States.

**11.02**

**Enforcement Actions Under the DBE Program.**

- (a) If you are a firm that does not meet the eligibility criteria of Article IV of this part and that attempts to participate in a federally-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, GUCP may initiate suspension or debarment proceedings against the DBE firm in accordance with federal and state law
  
- (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 Article IV of this part, the Department may initiate suspension or debarment proceedings against you in accordance with federal and state law.
  
- (c) The Department may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, or to the State Attorney General for prosecution under O.C.G.A. Section 16-20-10, any person who makes a false or fraudulent statement to a State agency in connection with participation of a DBE in any federally-assisted program or otherwise violates applicable Federal or State statutes.

**XII**

**Confidentiality, Intimidation and Retaliation**

**12.01 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, GDOT complies with provisions of the Georgia Open Records Act, 50-18-70, et seq. The Department may make available to the public any information concerning the DBE program, release of which is not prohibited by Georgia or Federal law.
  
- (c) **Confidentiality** of information on complainants. Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant will be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing.
  
- (d) **Cooperation.** All participants in GDOT's DBE program (including, but not limited to, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with compliance reviews, certification reviews, investigations, and other requests for information by the U.S. Department of Transportation or GDOT. Failure to do so shall be a ground for appropriate action against the party involved.
  
- (e) **Intimidation and retaliation.** No contractor or any other participant in the program is allowed to intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by this part or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this part.



- 1) Individuals who have cause to think that they have been subjected to intimidation or retaliation shall follow the procedures below in processing and resolving a complaint.
- (i) The complainant shall present the complaint in written form to the Equal Opportunity Division Director or to the Equal Opportunity Administrator.
  - (ii) The Equal Opportunity Director and/or Equal Opportunity Administrator will contact the complainant to acknowledge receipt of the complaint and advise the complainant of his/her right to bring the alleged incident to the attention of the Federal Highway Administration (FHWA), United States Department of Transportation, United States Department of Justice, or other federal authority, as applicable.
  - (iii) The Equal Opportunity Director and/or the equal opportunity Administrator will contact the party alleged to have caused the intimidation or retaliation of the complaint and advise the party of the proceedings and his rights during said proceedings.
  - (iv) The Equal Opportunity Director and/or the Equal Opportunity Administrator will immediately notify the administrative head of the operational unit and Federal Highway Administration of the complaint, and will conduct an investigation within thirty (30) working days.
  - (v) Within fifteen (15) days of completing the investigation, the Equal Opportunity Director and/or the Equal Opportunity Administrator shall submit a written report to the administrative head of the operational unit, with copies to the complainant, the party alleged to have caused the intimidation or retaliation, and the Federal Highway Administration.
  - (vi) All documentation relating to the complaint shall be maintained in the Office of the Equal Opportunity for a period of five (5) years.
- (2) Violation of this prohibition will constitute noncompliance with this part.

