

2014

Disadvantaged Business Enterprise (DBE)

Program Manual

Oklahoma Department of Transportation
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The Oklahoma Department of Transportation (ODOT) ensures that no person or groups of persons shall, on the grounds of race, color, sex, age, national origin, disability/handicap, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by ODOT, its recipients, sub-recipients, and contractors.

Policy Statement

In carrying out its Disadvantaged Business Enterprise (DBE) Program, the Oklahoma Department of Transportation (ODOT) ensures that no person or groups of persons shall, on the grounds of race, color, sex, age, national origin, disability/handicap, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by ODOT, its recipients, sub-recipients, and contractors.

The ODOT is committed to implementing the DBE Program as mandated in 49 CFR Part 26. The stated objectives of this program are:

- o Ensure nondiscrimination in the award and administration of the United States (U.S.) Department of Transportation (DOT) assisted contracts;
- o Create a level playing field on which DBEs can compete fairly for U.S. DOT assisted contracts;
- o Ensure that the program is narrowly tailored in accordance with the applicable law;
- o Ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs;
- o Help remove barriers to the participation in the U.S. DOT assisted contracts;
- o Assist in the development of DBE firms so that they may compete successfully in the marketplace outside of the DBE program; and
- o Provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

The DBE Liaison Officer, who will have direct, independent access to the Director concerning DBE program matters, will be responsible for the implementation and administration of the DBE program.

This policy statement will be included in all DOT assisted contracts through the Special Provisions text.

Signed:



Michael Patterson, Director
Oklahoma Department of Transportation



Date

I INTRODUCTION



In accordance with the requirements of the United States Department of Transportation (U.S. DOT) regulations (49 CFR Part 26), the Oklahoma Department of Transportation (hereinafter referred to as ODOT) has developed the Disadvantaged Business Enterprise Program (DBE Program).

Authority and Scope 26.3

The DBE Program applies to federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), or Titles I, III, and V of the Transportation Equity Act for the 21st. Century (TEA-21). It also applies to federal transit funds authorized by Titles I, III, V, and VI of ISTEA, or by federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21. The program applies to airport funds authorized by 49 U.S.C. 47101, et seq.

The DBE Program applies to all Federal Highway Administration (FHWA) recipients receiving funds authorized by statute to which 49 CFR part 26 applies, Federal Transit Administration (FTA) recipients who project awarding more than \$250,000 in prime contracts in a Federal fiscal year from FTA assistance, and Federal Aviation Administration (FAA) recipients who project awarding more than \$250,000 in prime contracts in a fiscal year from grants for airport planning and development. Prime contracts include contracts for goods as well as contracts for services.

Discriminatory Actions Prohibited 26.7

In carrying out its DBE program, the ODOT ensures that no person or groups of persons shall, on the grounds of race, color, sex, age, national origin, disability/handicap, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by ODOT, its recipients, sub-recipients, and contractors.

In administering its DBE program, ODOT will not, directly or through contractual or other arrangements, use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program.

Assurances 26.13

Each financial assistance agreement ODOT signs with a U.S. DOT operating administration (FHWA, FTA, FAA) or with a sub-recipient must include the following assurance;

“The Oklahoma Department of Transportation (or the recipient) shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR part 26. The Oklahoma Department of Transportation shall take all necessary and reasonable steps under 49 CFR part 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The Oklahoma Department of Transportation’s DBE program, as required by 49 CFR part 26 and approved by the

Federal Highway Administration, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Oklahoma Department of Transportation of its failure to carry out its approved program, the FHWA or the U.S. 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.*)”

Each federal-aid contract ODOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance:

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

Definition of Terms 26.5

Appendix A includes definitions of terms used by ODOT in conjunction with the DBE Program.

II. ADMINISTRATION



DBE Liaison 26.25

The Assistant Division Manager for Civil Rights is designated as the DBE Liaison Officer (DBELO) for the ODOT with the responsibility for developing, managing, and implementing the DBE program. The DBELO has direct, independent access to the Director on program matters. The DBELO has adequate staff to administer the program in compliance with 49 CFR part 26. The ODOT DBELO may be contacted at 200 N.E. 21st, Rm. 1-C-5, Oklahoma City, Oklahoma 73105, (405) 521-6046.

Financial Institutions 26.27

The Minority Bank Deposit Program (MBDP) began in 1969 in response to Executive Order 11458 (March 5, 1969), which established a national program supporting minority business enterprise. It was expanded under Executive Orders 11625 (October 13, 1971) and 12138 (May 18, 1979). The Competitive Equality Banking Act of 1987 (Public Law 100-86) and the Financial Institutions Reform, recovery and Enforcement Act of 1989 (Public Law 101-73) include provisions supporting the intent of the MBDP

The U.S. Treasury Department's Minority Bank Deposit Program (MBDP) is an initiative to help establish, preserve, and strengthen minority business enterprises. Minority-owned financial institutions are included under the definition of minority business enterprises.

MBDP is a voluntary program that encourages federal agencies, state and local governments and the private sector to use MBDP participants as depositaries and financial agents. Eligible participants include commercial banks and savings and loan associations that are minority-owned or minority-controlled; commercial banks and savings and loan associations that are owned, controlled and operated by women; and, credit unions serving low-income members (i.e., low-income credit unions).

ODOT has thoroughly investigated the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals within the state. ODOT encourages prime contractors to use such institutions. These institutions have been identified through the U.S. Department of the Treasury, Minority Bank Deposit Program. The names and addresses of the institutions are maintained as part of a resource list and are made available to all DBEs and the general public by contacting the ODOT DBELO. ODOT publishes this list on their website, and provides both DBE firms and prime contractors a copy each year in the DBE newsletter, which is mailed to both certified DBEs and prequalified bidders.

The list of MBDP institutions was updated by the U.S. Department of the Treasury on March 11, 2011. The list of Oklahoma institutions participating in the program can be found in Appendix G.

Program Development 26.21

Once the Federal Highway Administration (FHWA) approves the program, the approval counts for all DOT-assisted programs (except that goals are reviewed and approved by the particular

operating administration that provides funding for other DOT-assisted contracts). Thereafter, ODOT will not submit regular updates of the DBE program as long as ODOT remains in compliance with the program and 49 CFR Part 26. ODOT will submit significant changes in the program to FHWA for approval.

DBE Directory 26.31

ODOT maintains and makes available to interested persons a directory identifying all firms eligible to participate as DBEs in the program. In the listing for each firm, ODOT includes its address, phone number, and the types of work the firm has been certified to perform by using the most specific North American Industry Classification System (NAICS) code available to describe each type of work. The NAICS code for each DBE firm is collected on an ongoing basis and compared to the industry definitions found in NAICS to ensure accuracy prior to listing. The directory is updated on a monthly basis and an electronic version is maintained on ODOT's website at: <http://www.okladot.state.ok.us/>.

Bidders' List 26.11

ODOT maintains a bidder's list, consisting of all firms bidding on prime contracts and bidding or quoting subcontracts on DOT assisted projects. For every firm, the following information is to be included:

- Firm's name;
- Firm's address;
- Firm's status as a DBE or non-DBE;
- The age of the firm; and
- The annual gross receipts of the firm.

The information for the bidders' list is obtained through the Office Engineer Division and the Construction Division. The Civil Rights Division, External Programs, is responsible for maintaining the list. The Bidders' List information is obtained voluntarily from all prequalified prime contractors. The contractors submit a form and list all contractors, material suppliers, and trucking firms who have submitted bids or quotes to them within the last year. A database was established by Civil Rights Division - External Programs and is updated annually. The list of bidders is compared to the existing database to include new firms bidding, and to delete firms which no longer bid work to prequalified prime contractors.

The bidders' list provides the pool of ready, willing, and able contractors each year when developing the overall annual goal for the agency. This list is maintained in the Civil Rights Division, External Programs.

Monitoring Performance 26.37

ODOT's DBE Program includes a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract award or subsequently (e.g. as a result of modification of the

contract) is actually performed by the DBEs to which the work was committed. ODOT utilizes a Commercially Useful Function (CUF) Review process in order to ensure work is actually performed by the DBE.

Field personnel responsible for each project will perform CUF Reviews on each DBE firm to include trucking on a federally assisted project. The completed review will be submitted with the Final Estimate for review by the Construction Division and the Civil Rights Division, External Programs.

Inclusion of the FHWA 1273 in subcontracts, requirements for contractors to include a notice to subcontractors of their right to prompt payment and return of retainage, and the subcontractors' right to alternative dispute resolution to resolve payment differences, are monitored at contract stage by the Construction Division. Contractors attest to these requirements in the submittal of the request to sublet to the Construction Division. As part of the contract compliance review process, these items will be reviewed to ensure compliance.

Any instances when the use of joint checks or the leasing of prime contractor's equipment occurs between a DBE and prime contractor, will be reviewed during the contract compliance review to ensure compliance with the requirements of the DBE Program.

Review of the requirements for goal crediting of a DBE trucking firm will be reviewed for compliance by the Contract Compliance Officer during the process as a standard part of the subcontractor review.

Small Business Participation 26.39

ODOT developed a Small Business Element (SBE) within the DBE Program to foster small business participation in the Oklahoma highway construction industry. This element of the ODOT DBE program includes small businesses, as defined by SBA standards and the \$22.41 million threshold established by the Secretary of Transportation, in alternative contracting opportunities. The eligibility requirements along with an application for SBE certification are in Appendix I. ODOT is the certifying agency for all U.S. DOT recipients in the State of Oklahoma for SBEs.

The Civil Rights Division maintains a separate directory of SBE certified firms. A certified small business (SBE) will be eligible to participate in the Small Business Program administered by ODOT, along with certified DBE firms.

The Oklahoma Administrative Code 730:25-3-1 governs the use of alternative contracting methods and opportunities. Specifically, the waiver of pre-qualification of bidders seeking to perform as a prime contractor is permitted only on projects which do not encompass construction or maintenance of the highway, or when the Department determines it is in the best interest of the state to increase competition on individual projects of a special nature. The projects, as defined by their scope of work, specifically permitted for waiver of prequalification include (but not limited to):

1. Right of Way Clearance;
2. Landscaping;
3. Wetland Creation;

4. Environmental Mitigation; and
5. Transportation Enhancement Projects.

ODOT reviews upcoming bidding opportunities and if a project is identified, based on the above criteria, to represent an SBE opportunity, ODOT will advertise the project with the waiver of pre-qualification as an effort to solicit bids from SBE firms. These would be firms not usually able to perform the normal types of projects awarded by the Department, either due to limited financial resources, lack of prequalification, or because they specialize in only certain items of work. This type of evaluation enables ODOT to provide opportunities to small businesses which normally would not be available, and assist in overcoming barriers encountered in participating in the highway program.

As an example of the projects identified by ODOT in the past which met the waiver criteria and represented an opportunity for performance by smaller highway construction firms, ODOT identified the American Recovery and Reinvestment Act funded Americans with Disabilities Act Sidewalk Replacement Projects. These projects were advertised and awarded to firms who were not required to be prequalified. ODOT will continue to review the highway program to identify opportunities which lend themselves to fostering small business participation.

Oklahoma Statute governs unbundling projects into smaller contracts to enhance the ability of small businesses to bid and perform work as a prime contractors. This statutory provision is incorporated into the highway program by the State as a means to increase the available pool of ready, willing, and able contractors in the program and to increase opportunities for smaller contractors. ODOT bidding opportunities must comply with the Public Competitive Bidding Act (69 O.S.2001, §1101).

Under 69 O.S.2001, §1101 states, "If the project advertised is for the construction of more than eight (8) miles of road, and is not a surface treatment only project, said advertisement shall provide for bids on sections of the road no longer than eight (8) miles, as well as bids on the project as a whole." Moreover, "If the project advertised is a surface treatment only project of more than twenty (20) miles of road, the advertisement shall provide for bids on sections of the road no longer than twenty (20) miles, as well as bids on the project as a whole."

Surface treatment was further defined and has become official ODOT policy. The 20 mile project limit includes:

- Signing
- Striping
- Rumble Strips
- Guardrail
- Cable or Median Barrier
- Dowel Bar Retrofit
- Diamond Grinding
- Concrete Patching or Joint/Crack Seal
- Fog Seal
- Chip Seal
- Slurry Seal, Microsurfacing, Novachip, or Ralumac
- Ac or PC single life overlays

The 8 miles project limit applies to all other projects. The above list of projects is primarily of a specialized nature and is not usually performed by larger general contractors, but by the specialty contractors. These projects would lend themselves to performance by SBE firms performing as prime contractors.

III. CERTIFICATION STANDARDS



Subpart D - 26.61

An applicant firm seeking certification has the burden of demonstrating to ODOT, 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.

ODOT must rebuttably presume that members of the designated groups identified in 49 CFR Part 26.67(a) are socially and economically disadvantaged. However, applicants have the obligation to provide information concerning their economic disadvantage.

Individuals who are not presumed to be socially and economically disadvantaged, have the burden of proof, by a preponderance of the evidence, that they are socially and economically disadvantaged, as set forth in 49 CFR Part 26.67(d).

ODOT must make determinations concerning whether individuals and firms have met their burden of demonstrating group membership, ownership, control, and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

Group Membership Determinations 26.63

If ODOT has a well founded reason to question whether an individual is a member of a group that is presumed to be socially and economically disadvantaged, ODOT must require the individual to demonstrate, by a preponderance of the evidence, that they are a member of the group.

ODOT provides the individual with a written explanation of reasons for questioning their membership and a written request for additional evidence.

In making such a determination, ODOT considers whether the person has held himself/herself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. In making the determination, ODOT may require the applicant to produce appropriate documentation of group membership.

If it is determined that an individual is not a member of a designated group, the individual must demonstrate social and economic disadvantage on an individual basis.

ODOT's decisions concerning membership in a designated group are subject to the certification appeals procedure as set forth in 49 CFR Part 26.89

Small Business Size Determinations 26.65

To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. ODOT will apply current SBA business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform on federally-assisted contracts.

Even if the firm meets the requirements of the above paragraph, a firm is not an eligible DBE if the firm (including its affiliates) has had average annual gross receipts (as defined in 13 CFR Part 121.402) during the previous three fiscal years in excess of \$22.41 million. This figure may be adjusted from time to time by the U.S. DOT for inflation.

Social and Economic Disadvantage 26.67

ODOT rebuttably presumes that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged. ODOT requires applicants to submit a signed, notarized affidavit of certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

ODOT requires each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification to submit a signed, notarized statement of personal net worth, with appropriate supporting documentation. Notwithstanding any provision of state law, ODOT does not release an individual's personal net worth statement or any documentation supporting it to any third party without the written consent of the submitter. Provided however, that ODOT transmits this information to U.S. DOT in any certification appeal proceeding under 26.89 in which the disadvantaged status of the individual is in question.

In determining personal net worth, ODOT excludes an individual's ownership interest in the applicant firm and the individual's equity in his or her primary residence (except that portion of such equity that is attributable to excessive withdrawals from the applicant firm). A contingent liability does not reduce an individual's personal net worth. Airport concessionaires have an additional exclusion on their personal net worth. Assets that the owner/applicant can demonstrate are necessary to obtain financing to enter or expand a concessions business at an airport subject to 49 CFR Part 23 and assets that have been encumbered to support existing financing for the applicant's business.

If the statement of personal net worth that an individual submits shows that the personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted.

When an applicant or certified DBE's presumption of social and/or economic disadvantage is rebutted, his or her ownership and control of the firm cannot be used for purposes of DBE eligibility until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that an individual's personal net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage.

Notwithstanding any provision of Federal or State law, ODOT will not release an individual's personal net worth statement or any documents pertaining to it to any third party without the written consent of the submitter. Provided, ODOT must transmit this information to U.S. DOT in any certification appeal proceeding under Section 26.89 or to any other state to which the individual's firm has applied for certification under 49 CFR 26.85.

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged may apply for DBE certification. ODOT will make a case-by-case determination of whether the person whose ownership and control are relied upon for DBE certification is in fact socially and economically disadvantaged. Guidelines for making individual determinations of disadvantage are found in 49 CFR Part 26, Appendix E.

Ownership Determinations**26.69**

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

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

In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.

In the case of a limited liability company, at least 51 percent of each class of membership interest must be owned by socially and economically disadvantaged individuals.

The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership 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.

All securities which constitute ownership of a firm shall be held directly by disadvantaged individuals. Except as provided for, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining ownership. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm if;

1. The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
2. The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.

The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interest must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, or mere participation in a firm's activities as an employee. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:

The owner's expertise must be in a specialized field; be of outstanding quality; be in areas critical to the firm's operations; be indispensable to the firm's potential success; be specific to the type of work the firm performs; and must be documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm. The individual whose expertise is relied upon must also have a significant financial investment in the firm.

Examples of acceptable acquisition of ownership in a firm are:

As a 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 through inheritance, or otherwise because of the death of the former owner.

ODOT does not presume as held by a socially or 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 involved in the same firm, or an affiliate firm, or engaged in an ongoing business relationship with the firm, or an affiliate of the firm. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate, by clear and convincing evidence that the gift or transfer was made for reasons other than obtaining DBE certification, and that the disadvantaged owner actually controls the management, policy, and operation of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

When marital assets held jointly or as community property are used to acquire the ownership interest, ODOT deems that ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, if 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 the other spouse or the firm is domiciled. In order to be considered, the transfer should have occurred prior to the time the assets are used to purchase interest in the applicant firm by the minority or female. ODOT does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

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

ODOT considers the following factors in determining the ownership of a firm. ODOT does not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because an applicant acquired his or her ownership as the result of a gift, or transfer without adequate consideration, other than the types set forth above; there is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or ownership of the firm in question or its assets is transferred for adequate consideration from a non-disadvantaged spouse to a disadvantaged spouse. In this case, ODOT gives particularly close and careful scrutiny as to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

Control Determinations 26.71

Only an independent business may be certified as a DBE. An independent business is one in which its viability does not depend on its relationship with another firm or firms.

In determining whether a potential DBE is an independent business, ODOT scrutinizes relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, percentage of business contracted, leasing arrangements, material agreements, employment agreements, and other resources.

ODOT considers whether present or recent employer/employee relationships between the disadvantaged owner(s) and non-DBE firms or persons associated with non-DBE firms compromise the independence of the DBE firm or applicant.

ODOT examines the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the DBE firm or applicant.

In considering factors related to the independence of a potential DBE firm, ODOT considers if the relationships between the potential DBE and non-DBE firms are consistent with normal industry practice.

A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the DBE owners. There can be no restrictions through corporate charter provisions, bylaw provisions, contracts or any other formal or informal devices that prevent the owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm.

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.

A disadvantaged owner must hold the highest officer position in the firm (e.g., chief executive officer or president).

In a corporation, disadvantaged owners must control the board of directors.

In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

Individuals who are not disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.

The disadvantaged owners may delegate various areas of the management, policy making, or daily operations of the firm to other participants in the firm, regardless of whether these participants are disadvantaged. Such delegations of authority must be revocable, and the disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the disadvantaged owners in the firm's overall affairs must be such that ODOT can reasonably conclude that the disadvantaged owners actually exercise control over the firm's operations, management, and policy.

The 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 disadvantaged owner is not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise which is limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.

If state or local law requires the persons to have a particular license or other credentials in order to own and/or control a certain type of firm, then disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential.

ODOT considers differences in remuneration between the disadvantaged owners and other participants in the firm in determining whether to certify a firm. Such consideration is 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 relevant factors.

In order to be viewed as controlling a firm, a disadvantaged owner cannot engage in outside employment or possess 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.

A disadvantaged individual may control a firm even though one or more immediate family members who are not disadvantaged participate in the firm. A judgment is made about the control the disadvantaged owner exercises vis-à-vis other persons involved in the business.

If ODOT cannot determine that the disadvantaged owners, as distinct from the family as a whole, control the firm, even though they may participate significantly in the firm's activities, then the disadvantaged owners have failed to carry their burden of proof concerning control.

Where a firm was formerly owned and/or controlled by a non-disadvantaged person and further, its ownership and control have been transferred to a disadvantaged individual, and where the non-disadvantaged person remains involved with the firm in any capacity; the disadvantaged owner must demonstrate, by clear and convincing evidence, that the transfer of ownership and/or control was made for reasons other than obtaining DBE certification. Further, it must be shown that the disadvantaged owner actually controls the management, policy, and operations of the firm notwithstanding the continuing participation of a non-disadvantaged person who formerly owned and/or controlled the firm.

In determining whether a firm is controlled by the disadvantaged owners, ODOT considers whether the firm owns equipment necessary to perform its work. Where the leasing of equipment is a normal industry practice and the lease does not involve a relationship with a prime contractor or other party which may compromise the independence of the firm, a firm is not considered ineligible because it leases its equipment.

ODOT grants certification to a firm only for specific types of work for which the disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm must demonstrate that its disadvantaged owners are able to control the firm with respect to the new types of work. ODOT does not require a firm to recertify or submit a new application to become certified for additional types of work, but verifies the owner's ability to control the firm in the additional categories of work. The types of work a firm can perform must be described in terms of the most specific available NAICS code. In addition to the description of work categories for each firm, the appropriate NAICS codes will be included in the firm's listing in the DBE directory.

The DBE firm bears the burden of providing detailed information ODOT needs in order to make an appropriate NAICS code designation.

A business operating under a franchise or license agreement may be certified if it meets the certification standards and the franchiser or licensor is not affiliated with the franchisee or licensee. In order for a partnership to be controlled by disadvantaged individuals, any non-disadvantaged partner must not have the power, without the specific written concurrence of the disadvantaged partner, to contractually bind the partnership or subject the partnership to contract liability.

The disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the disadvantaged owners from controlling the firm if they continue to maintain control of the work of the leased employees. This control includes being responsible for accepting, rejecting, assigning, and otherwise controlling the on-the-job activities of the employees. A DBE may not lease employees from a prequalified prime contractor or use employees on the payroll of a prime contractor or non-DBE construction subcontractor.

Other Certification Considerations 26.73

While consideration of whether a firm performs a CUF or is a regular dealer pertains solely to counting DBE participation toward DBE goals, ODOT considers whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the program.

DBE firms or firms seeking DBE certification shall cooperate fully with requests for information relevant to the certification process. Failure or refusal to provide information is grounds for denial or revocation of certification.

Only firms organized for profit are eligible for certification as DBEs. Not-for-profit organizations, even though controlled by disadvantaged individuals, are not eligible for certification as DBEs.

The ODOT may certify firms owned and controlled by a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice if disadvantaged individuals own and control the holding company as provided under 49 CFR part 26.73(e)(1) and (2).

A firm that is owned by an Indian tribe as an entity, rather than by individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR part 26.65. Such a firm must be controlled by socially and economically disadvantaged individuals.

Alaska Native Corporations have special certification rules outlined in 49 CFR part 26.73(i).

As a condition of being authorized to bid or propose on DOT assisted transit vehicle procurement, ODOT requires the transit vehicle manufacturer to certify that it has complied with the requirements of 49 CFR part 26.47.

ODOT will evaluate the eligibility of a firm on the basis of present circumstances. ODOT will not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals some time in the past, if the firm currently meets the ownership and control standards of the Regulation.

IV. CERTIFICATION PROCEDURES



Subpart E - 26.81

Purpose of Certification

The purpose of certification is to ensure that only firms independently owned and controlled in both substance and form by one or more socially and economically disadvantaged persons participate in the DBE program. These businesses must meet all the eligibility criteria set forth in 49 CFR Part 26 to be certified.

Certification Process 26.83

ODOT takes the following steps in determining whether an applicant firm meets the standards of 49 CFR Part 26:

- Perform an on-site visit to the offices of the firm.
- Interview the principal officers of the firm and review their resumes and/or work histories.
- Perform an on-site visit to job sites if there are such sites on which the firm is working.
- If the firm is a corporation, analyze the ownership of stock in the firm.
- Analyze the bonding and financial capacity of the firm.
- Determine the work history of the firm, including contracts it has received and work it has completed.
- Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work.
- Obtain or compile a list of the equipment owned by or available to the firm, equipment leased by the firm, and any agreements.
- Obtain copies of the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program.
- Require potential DBEs to complete and submit an appropriate application form.
- Require potential DBEs to submit an affidavit attesting to the accuracy and truthfulness of the information on the application form.
- Review all information received and available to ODOT prior to making a decision about the eligibility of the firm.

Each potential DBE is required to complete and submit a Uniform Certification Application. This application contains information on the eligibility requirements, instructions, and required documentation necessary for ODOT to process the application.

Once an application is received, each applicant will be notified in writing, within 30 days, whether the application is complete and ready for evaluation, or if additional documentation is required before an on-site review can be conducted.

All firms applying for certification will cooperate in supplying information which may be requested in order to make an eligibility determination. Once a completed application and supporting documentation are received, the DBE Reviewer performs an on-site review of the applicant firm. A report and eligibility checklist is prepared and forwarded to the Assistant Division Manager for Civil Rights. If, at the time of submission, it is determined that the applicant exceeds the personal net worth threshold of \$1.32 million the process ceases and the applicant is denied with no further action.

The Assistant Division Manager for Civil Rights is the DBE Certification Officer and renders eligibility decisions for DBE applicants. In the case of a highly political or very complex application, a DBE Certification Committee may meet to review and render the eligibility decision. The decisions are based upon information contained in the applicant's file along with the DBE Reviewer's report and eligibility checklist.

Decisions on applications for certification are made within 90 days of ODOT's receipt from the applicant firm of all required information. ODOT may extend this time period once, for no more than an additional 60 days. Written notice shall be sent to the firm, explaining fully and specifically the reasons for the extension. Decisions made by the DBE Certification Officer are documented and maintained in the applicant's file.

If the decision is made that an applicant meets the eligibility requirements, a certification notice is sent to the firm. The notice contains the beginning date of the firm's eligibility and the categories of work the firm is certified to perform. The firm's name is placed in the Directory of Certified DBEs which is available to the prequalified prime contractors each month on ODOT's website.

Once a DBE is certified, it shall remain certified unless its certification is removed through procedures set forth in 26.87. If the factual basis on which the certification was made changes, ODOT performs a certification review to update. Once certified, a DBE must inform ODOT of any change in circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements or any material change in the information provided in the application form. Changes in management responsibility among members of a limited liability company are covered by this requirement for notification to ODOT. If such changes occur, the DBE must provide ODOT written documentation within 30 days of the occurrence of the change, along with supporting documentation describing in detail the nature of such changes. If the DBE fails to make timely notification of such a change, he or she is deemed to have failed to cooperate under 49 CFR Part 26.109(c) which is grounds for appropriate action, including but not limited to, denial of certification, removal of eligibility, and/or suspension or debarment of the firm if it is prequalified.

A DBE must provide to ODOT, every year on the anniversary of the DBE firm's initial certification, a sworn affidavit affirming that there have been no changes in the firm's circumstances which affect its ability to meet size, disadvantaged status, ownership, or control requirements or any material changes in the information provided in its original application form, except for changes about which the DBE has notified ODOT under the above paragraph. The affidavit specifically affirms that the business continues to meet small business size criteria and the overall gross receipts cap. The DBE firm supports this affirmation with documentation of the firm's gross receipts. If the DBE fails to provide this affidavit in a timely manner, it is deemed to have failed to cooperate and proceedings commence to remove the DBE's certification as set forth in 26.87. ODOT mails the annual affidavit to the firm prior to its anniversary date. The firm has to complete the affidavit, attach supporting documentation, and return the affidavit and documentation to ODOT on or before the firm's anniversary date. If the factual basis upon which certification was made changes, ODOT may require the firm to submit documentation pertaining to the changes and ODOT may conduct an eligibility review of the firm.

At the end of the three-year certification, a firm is required to complete a certification update. The qualifying firms are notified, in writing, by ODOT that their certification is due for review and are sent the appropriate application. Once a completed application is received, an on-site review is conducted. The review, along with supporting documentation, is utilized by the DBE Reviewer in writing the eligibility report. The report, checklist, and file are forwarded to the DBE Certification Officer for consideration of the firm's continuing eligibility in the DBE program. Those firms that are deemed to no longer be eligible for the program are subject to the removal process outlined in 49 CFR 26.87 because this is not considered a new certification.

Interstate Certification 26.85

Beginning January 1, 2012, this section shall apply to any out-of-state firm requesting DBE certification with the Oklahoma Unified Certification Program (OUCP).

An out-of-state firm seeking DBE certification with ODOT must be currently certified as a DBE under 49 CFR Part 26, Subpart D, by their home state.

ODOT may, at its discretion, accept the other state's certification and certify the firm, without further procedures. To obtain certification in this manner, the applicant firm must provide ODOT a copy of its certification notice from the home state. Before certifying the firm, ODOT will confirm that the firm has a valid, current certification by reviewing the home state's electronic directory or by receiving written confirmation from the home state.

If ODOT chooses not to accept the home state's certification in the manner described above, the applicant firm must provide the following information to ODOT:

1. A complete copy of the application form, all supporting documents, and any other information the applicant has submitted to the home state or any other state related to the firm's certification. This includes affidavits of no changes, any notices of changes, as well as any other recipient concerning the application or the firm's status as a DBE;

2. Any notices or correspondence from states other than the home state relating to the firm's status as an applicant or DBE (e.g., notices of denial of certification);
3. Any appeals filed with U.S. DOT, to include the applicant firm's letter of appeal and U.S. DOT's response;
4. An affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that the applicant has submitted all of the information required by 49 CFR 26.85(c), that the information is complete, and that it is an identical copy of the information submitted to the home state.

ODOT will request a copy of the home state's on-site review, and if the on-site review is more than three years old, as of the date of the firm's application to ODOT, ODOT will require that the affidavit required above also affirms that the facts in the on-site report remain true and correct.

Once all the information required from the applicant firm is received, ODOT will take the following actions:

1. Within seven days, contact the home state and request a copy of the on-site review report, any updates to the review, and any evaluation of the firm based upon the site visit. The home state must transmit this information within seven days of receiving the request;
2. Determine whether there is good cause to believe that the home state's certification of the firm is erroneous or should not apply to ODOT. Reasons for making such a determination may include:
 - A. Evidence that the home state's certification was obtained by fraud;
 - B. New information, not available to the home state at the time of its certification, showing that the firm does not meet all eligibility criteria;
 - C. The home state's certification was factually erroneous or was inconsistent with the requirements of 49 CFR Part 26;
 - D. That Oklahoma's State law requires a result different than that of the State law of the home state;
 - E. That the information provided by the applicant firm did not meet the requirements as provided above.

Unless ODOT determines there is good cause to believe the home state's certification is erroneous or should not apply to ODOT, ODOT shall, no later than 60 days from the date on which ODOT received from the applicant firm all information required, send to the firm a notice that it is certified and place the firm on the directory of certified firms.

If ODOT determines the home state's certification is erroneous, ODOT will, no later than 60 days from the date on which ODOT received from the firm all information required, send a notice stating the reasons for this determination.

This notice will state the specific reasons for denial and offer the firm an opportunity to respond. The firm may respond in writing or request a meeting with the DBE Certification Officer. If the firm

requests a meeting, ODOT will schedule a meeting to take place within 30 days of receiving the request.

The firm bears the burden of demonstrating, by a preponderance of the evidence, that it meets the requirements of 49 CFR Part 26 with respect to the specific issues identified by ODOT.

ODOT will issue a written decision within 30 days of receipt of the written appeal or meeting.

A decision made by ODOT may be appealed to the U.S. DOT under 49 CFR Part 26.89.

If ODOT has not received a copy of the on-site review from the home state within 14 days after making the request, ODOT will hold action pending receipt of the report. ODOT will notify the applicant no later than 30 days after receiving the applicant's information of delay in the process and the reason for it.

When ODOT, as the UCP, denies a firm's application, rejects the application of a firm certified in another state through the procedures established in this section, or decertifies a firm, ODOT will make an entry into the U.S. Department of Transportation Office of Civil Rights' (DOCR's) ineligibility determination on-line database. The following information will be entered:

- The name of the firm;
- The name(s) of the firm's owner(s);
- The type and date of the action;
- The reason for the action.

As the UCP, ODOT's Civil Rights Division, External Programs, will check the DOCR website at least once a month to determine whether any firm that is applying for certification, or that is certified, is on the list.

For any such firm that is on the list, ODOT will promptly request a copy of the listed decision from the UCP which made the decision. As the UCP receiving such a request, ODOT will provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, ODOT will consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant firm.

Denial of Initial Request for Certification 26.86

If a firm which is not currently certified with ODOT is denied certification as a DBE, ODOT provides the firm a written explanation of the reasons for denial, specifically referencing the evidence in the record that supports each reason for denial. A firm may request a reconsideration of the file within 15 days of receipt of the letter. The firm's written appeal, along with any supporting documentation, should specifically address the reasons for denial cited in ODOT's decision. If no response is received from the applicant firm by ODOT within 15 days, ODOT's decision becomes administratively final. When a firm is denied certification, they may not reapply for certification for a time period of 12 months from the firm's receipt of the denial letter.

When ODOT makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the U. S. Department of Transportation under 49 CFR Part 26.89.

Removal of Eligibility 26.87

Ineligibility Complaints

Any person may file a written complaint with ODOT alleging that a currently certified firm is ineligible to participate in the DBE program. The complainant shall specify the alleged reasons why the firm is ineligible. ODOT is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint should include all information supporting the assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants identities is protected as provided in 49 CFR Part 26.109(b). ODOT reviews the records concerning the firm, any material provided by the firm and the complainant, and any other available information. ODOT may request additional information from the firm or conduct any other investigation ODOT deems necessary. Any written complaints should be sent to the Assistant Division Manager, Civil Rights, 200 N.E. 21st. Oklahoma City, OK. 73105.

If ODOT determines that there is reasonable cause to believe that the firm is ineligible, ODOT provides written notice to the firm that ODOT proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If ODOT determines reasonable cause does not exist, the complainant and the firm are notified in writing.

ODOT Initiated Proceedings

If based on changes in the circumstances of a firm's eligibility or other information that comes to ODOT's attention, ODOT determines that there is reasonable cause to believe a currently certified firm is no longer eligible, ODOT provides written notice to the firm that ODOT proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons references the evidence in the record on which each reason is based.

When a firm is notified that there is reasonable cause to remove its eligibility, the firm may request a hearing before the DBE Hearing Board. This request shall be made, in writing, within 30 days of receipt of ODOT's decision, and should be addressed to ODOT's General Counsel, who will then schedule a hearing. The firm may elect to present information and arguments in writing, without going to a hearing.

Following the decision, the DBE Hearing Board provides the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports the decision. The notice informs the firm of the consequences of the decision and the availability of an appeal to the U. S. Department of Transportation under 26.89.

A firm remains an eligible DBE during the pendency of the proceeding to remove its eligibility. The firm does not become ineligible until the issuance of the notice removing its certification.

When a prime contractor has made a commitment to use an ineligible firm, or ODOT has made a commitment to use a DBE prime contractor, but a subcontract or contract has not been executed before ODOT issues a decertification notice as provided for in 26.87(g), the ineligible firm does not count toward the contract goal or overall goal. ODOT directs the prime contractor to meet the contract goal with an eligible DBE or demonstrate that it has made a good faith effort to do so.

If a prime contractor has executed a subcontract with a DBE firm before ODOT has notified the DBE firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward the contract DBE goal for the DBE firm's work. In situations where ODOT has awarded a contract to a DBE prime contractor that was later ruled ineligible, the portion of the ineligible firm's work performed after the notice was issued shall not count toward the overall goal, but may count toward the contract goal. Work performed by DBE subcontractors subsequently found to be ineligible does not count towards the overall goal, although the prime contractor may receive credit towards the contract goal.

The exception to this rule is if the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, ODOT may continue to count its participation on that contract toward overall and contract goals.

DOT Initiated Proceedings

If FHWA determines that information on ODOT's certification records, or other information available to FHWA, provides reasonable cause to believe a firm ODOT certified does not meet the eligibility criteria of the regulation, FHWA may direct ODOT to initiate a proceeding to remove the firm's eligibility.

FHWA must provide ODOT and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information. ODOT must immediately commence and prosecute a proceeding to remove eligibility as provided in 49 CFR Part 26.87(b).

When a firm is notified that there is reasonable cause to remove its eligibility, ODOT will give the firm an opportunity for a hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.

In such a proceeding, ODOT bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of the regulation.

ODOT will maintain a complete record of the hearing, as required by the Oklahoma Administrative Procedures Act. If there is an appeal to U.S. DOT, ODOT will provide a transcript of the hearing to U.S. DOT and, upon request, to the firm. ODOT will retain the original record of the hearing.

The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, ODOT bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as ODOT would during a hearing.

ODOT will ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. ODOT's General Counsel is the hearing officer for these proceedings, and appoints other ODOT personnel to serve as members of a hearing board for purposes of a DBE proceeding.

A decision to remove eligibility must not be based on a reinterpretation or changed opinion of information available to ODOT at the time of certification. A decision may be based on one or more of the following:

1. Changes in the firm's circumstances since the certification of the firm by ODOT that render the firm unable to meet the eligibility standards;
2. Information or evidence not available to ODOT at the time the firm was certified;
3. Information that was concealed or misrepresented by the firm in previous certification actions by ODOT.
4. A change in the certification standards or requirements of U.S. DOT since ODOT certified the firm;
or
5. A documented finding that ODOT's determination to certify the firm was factually erroneous.

Appeals to U.S. DOT

If a firm is denied certification or eligibility is removed by ODOT, the firm may make an administrative appeal to the U.S. DOT. The DBE must send a letter to U.S. DOT within 90 days of the date of ODOT's final decision and include all information and arguments concerning why ODOT's decision should be reversed. Pending U.S. DOT's decision, ODOT's decision to deny certification or decertify the firm remains in effect. Appeals should be sent to the following address:

Department of Transportation
Office of Civil Rights
1200 New Jersey Ave., SE
Washington, D.C. 20590

MISREPRESENTATION AS A SMALL BUSINESS OR DBE CONCERN 26.107

If a firm that does not meet the eligibility criteria of 49 CFR Part 26, attempts to participate in a DOT assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or misrepresentation or under circumstances indicating a serious lack of business integrity or honesty,

suspension or debarment proceedings may be initiated under Oklahoma Transportation Commission Rules, OAC Title 730.

If a firm 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 eligibility criteria, suspension or debarment proceedings may be initiated under CFR Parts 180 and 1200.

ODOT may refer all information concerning alleged false, fraudulent, or deceitful statements or actions in the DBE program to the Federal Bureau of Investigation, the U.S. DOT Office of Inspector General, and/or the appropriate state authorities for criminal investigation.

Enforcement action may be taken against any participant in the DBE program whose conduct is subject to such action under 49 CFR Part 31 and/or appropriate Federal and/or State criminal statutes.

COMPLAINT PROCESS

Civil Rights Division - External Programs monitors and evaluates issues regarding the DBE Program. This may include, but is not limited to, complaints regarding allegations of program fraud, abuse, improper certification, or other violations of the DBE Program.

Persons wishing to file a complaint must do so in writing on the Complaint Form (Appendix F) and present it in person or by mail to the Assistant Division Manager for Civil Rights. ODOT then investigates such complaints and notifies the complaining party of its findings. Determinations by ODOT are made based on the nature of the complaint and the evidence uncovered. All complaints are confidential to the extent permitted in the Oklahoma Open Records Act.

Complaints may also be filed with the U. S. DOT in accordance with 49 CFR Part 26.107.

UNIFIED CERTIFICATION PROGRAM 26.81

The Oklahoma Unified Certification Program (OUCP), which includes all DOT recipients in the State of Oklahoma, was approved by the U.S. DOT, Office of the Secretary, on February 3, 2003. According to the OUCP, ODOT is the certifying agency for all DOT recipients in Oklahoma that certifies DBE firms in accordance with 49 CFR Part 26 and maintains all signed agreements and the database of OUCP partners. Likewise, all DOT recipients (OUCP partners) in the State of Oklahoma agree that only DBE firms certified by the OUCP may participate as DBEs on any DOT-assisted contract in the State of Oklahoma. A copy of the approval letter may be found in Appendix H.

V. GOALS



Subpart C

General

26.41

ODOT's overall goal is based on evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate in U.S. DOT-assisted contracts.

Overall Goal

26.45

The baseline figure is calculated by determining the percentage of ready, willing and able DBEs relative to all firms ready, willing and able. All contractors are categorized by the type of work they perform. The amount of work available in each category of work is also determined. The goal is calculated by dividing the number of DBEs by the number of all contractors for a category of work and multiplying that number by the percent of work available in the category. The results from each of these categories are added together for the overall goal. The major categories of work include the following: erosion control, grade & drain, surfaces, structures, fencing and guardrail, staking, traffic control, and preconstruction.

The information for the available pool is derived from the DBE Directory, data from the Trns*port System, and the Bidders' List. For the contracting areas of preconstruction, to include right-of-way service providers, engineering consultants, and other professional service firms, a combination of the DBE Directory, a Right-of-Way Service Provider Directory, and a list of qualified consultants maintained by ODOT's Project Management Division, is used to determine the available pool of professional service providers.

To determine the percentages of work contracted by work categories, ODOT utilizes the over 1500 pay items contained in the Trns*port system by item group, item number, percent of dollars contracted, and contract occurrence. This data is used to weigh each major category of work.

Adjustments are made to the baseline figure considering circumstances affecting the contractors competing or changes in the volume and distribution of contract dollars by items of work.

Adjustments are made for such situations as those DBE firms which graduate from the DBE Program or those firms no longer eligible to participate in the program, and other factors as found in 49 CFR Part 26.45(d).

Past participation is considered using the goal attainment for the last five years and calculating an average. That average is then averaged with the initial baseline goal (including adjustments).

In determining what percentage of the goal ODOT can estimate to achieve through race-neutral means, ODOT takes into consideration the percentage of the goal achieved by DBE prime contractors, the amount overall goals were exceeded in the past, and instances where DBEs were used on projects with zero goals. ODOT has drastically improved its ability to accurately capture, and therefore more accurately predict the amount of race-neutral participation.

In addition, ODOT utilizes the means prescribed by 49 CFR Part 26.51 to maximize the portion of the goal to be met through race-neutral DBE participation.

ODOT uses a systematic process for public involvement in the goal setting process. Public meetings are scheduled and advertised each year to encourage participation in the goal setting process by interested parties.

Once the 3 year overall annual goal is established, ODOT submits the goal to FHWA for approval according to the schedule provided by FHWA. The goal methodology is maintained as a separate document to this program guide. ODOT publishes a notice announcing that the proposed goal and its rationale are available for inspection during ODOT's normal business hours for 30 days following the date of the notice. This notice also informs the public that ODOT will accept comments on the goal for 45 days from the date of the notice. The notice includes the address to which comments may be sent. The notice is published in general circulation newspapers and minority newspapers.

ODOT, through its Supportive Services Program, provides technical assistance in locating bonding or financing, communicates the contracting opportunities to all DBEs, ensures the dissemination to all prime contractors of lists of DBEs, provides technical assistance in areas such as business management, record keeping, financial and accounting assistance, estimating and plan reading workshops, computer assistance, and other services necessary to maximize the participation of DBEs and small businesses in DOT-assisted projects.

Failure to Meet Overall Goals 26.47

If the awards and commitments reported on the Uniform Report of Awards and Commitments and Payments at the end of any federal fiscal year are less than the overall goal applicable to that federal fiscal year, ODOT will do the following:

1. Analyze the reasons for the difference between the overall goal and the actual achievement;
2. Establish steps and milestones to correct the deficiencies identified in order to meet the goal in the new federal fiscal year; and
3. This analysis and corrective actions will be submitted to FHWA within 90 days of the end of the federal fiscal year for approval.

If the Uniform Report of DBE Awards or Commitments and Payments or other information demonstrates that current trends make it unlikely that ODOT will achieve DBE awards and commitments that would be necessary to allow ODOT to meet the overall goal at the end of the federal fiscal year, FHWA may require ODOT to make further good faith efforts, such as by modifying the race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the federal fiscal year.

Project Goals

26.51

ODOT sets project goals based upon the annual goal under 49 CFR Part 26. After the portion of our goal which will be met through race-neutral means is estimated, the remainder of the goal is met through race-conscious means, or setting DBE goals on those U.S. DOT assisted projects with the most subcontracting opportunities. Setting construction project goals is the responsibility of the Civil Rights Division, External Programs. Any proposed changes in a project goal once the project has been advertised, must be approved by the FHWA Division Office.

The Office Engineer Division provides the Civil Rights Division copies of engineers' estimates for upcoming projects. The estimates, along with a goal setting worksheet, are used to document specific line items, quantities, and dollar amounts for possible subcontracting to DBE firms. Once a goal is established, the engineers' estimates, along with the proposed goal, are returned to the Office Engineer Division for inclusion in the bid proposals. Goals are based upon subcontracting opportunities, the availability of DBEs, the geographic location, and the known capacity of DBEs. Throughout the year the goal is tracked to determine what percentage is being met through race-neutral means and then individual project goals are adjusted accordingly.

The Director of Engineering and the Assistant Division Manager for Civil Rights, review consultant and other professional services solicitations to determine subconsulting opportunities and the availability of certified DBEs available to perform in professional services. The proposed DBE goal is then advertised with the solicitation. The consultant contract goal is determined prior to the consultant interview process and the consultants are notified of required DBE participation.

Tracking Mechanism

In order to track the goal attainment throughout the year, ODOT utilizes the Trns*port System to monitor DBE utilization, both race-neutral and race-conscious. This information is used to determine when it is necessary to make adjustments to the use of project goals. The results of race-neutral efforts are maintained separately from the race-conscious goals.

Consultants and service providers submit information concerning payments made to DBE subconsultants to the Project Management Division and the Right-of-Way Division. Each of their respective areas submits a report to Civil Rights Division - External Programs on a semiannual basis which shows payments made to all consultants on U.S. DOT assisted contracts, and payments made to DBE subconsultants and service providers.

VI. PRE-BID, CONTRACTS, AND AWARD OF CONTRACT PROCEDURES



DBE Notification

The procedure for ODOT to notify DBE of contract opportunities may include, but is not limited to the following:

1. A plan reading room will be available for all subcontractors to review plans.
2. Plans, specifications, and other pertinent materials will be available through either the Office Engineer Division or the Reproduction Office.
3. The current Directory of Certified DBEs will be available to all bidders on ODOT's website.
4. Information on lettings will be available through ODOT's Internet web site.

Contract Documents

ODOT includes the following DBE documents in the contract proposals for all Federal-aid construction contracts;

1. Notice to Contractors;
2. Special Provision Text Disadvantaged Business Enterprise;
3. Disadvantaged Business Enterprise Policy Statement;
4. Prompt payment and return of retainage clause; and
5. Assurance of non-discrimination by contractors, subrecipients or subcontractors.

Bidders' Action 26.53

When ODOT has established a DBE contract goal, ODOT awards a U.S. DOT assisted contract only to a bidder who either fulfills the contract DBE goal or demonstrates good faith efforts to meet the goal.

All bidders shall, with the submission of their bid, show their intent to meet or exceed the DBE goal established for the project, or propose an adjusted goal accompanied by their submission of good faith efforts. Failure to make the written assurance which includes the names of the DBEs used, the work they will perform, and the price for the work, or failure to demonstrate good faith efforts acceptable to ODOT to meet or exceed the DBE goal shall render a bid non-responsive, and the bid shall be rejected by ODOT.

If a bidder cannot meet the established DBE goal, the bidder shall document and submit with its bid proposal justification stating why it could not meet the established DBE goal and demonstrate its good faith efforts (GFE). To demonstrate GFEs to meet the DBE goal, the bidder shall document the steps taken to obtain DBE participation. Determination of GFE shall be based on the substance of the GFE, not simply form. Efforts taken which are not reasonably calculated to obtain DBE subcontracts on specific projects or for specific work on a specific project are not considered sufficient to fulfill the good faith requirement. The Office Engineer for ODOT forwards the apparent low bidder's GFE documentation to the DBE Liaison Officer (DBELO) for evaluation.

The DBELO reviews the GFE based upon the guidance found in Appendix A to Part 26 – Guidance Concerning Good Faith Efforts. These steps may be found in Appendix F to the DBE Program Manual. While this is a list of types of actions which should be considered as a part of a bidder's GFE to obtain DBE participation, it is not a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases. The DBELO reviews the GFE to ensure necessary and reasonable steps used by the bidder to meet the GFE test include the following:

- Identifying the areas or items of work most likely to be subcontracted in order to increase the likelihood of DBE participation;
- Contacting currently certified DBE firms for each area of work to solicit quotes;
- Providing reasonable and equal time for all prospective subcontractors to prepare and submit quotes;
- Providing interested DBEs with adequate information about the plans, the scope of work, and the requirements of the project in a timely manner to assist them in responding to a solicitation;
- Maintain complete documentation of the DBEs contacted and responses; and
- Negotiating in good faith with interested DBEs.

If a bidder declares a DBE non-competitive after following all steps, the bidder must submit sufficient documentation to ODOT for the DBELO to make such a determination. Documentation should include quotes from both non-DBE and DBE firms for the same items of work. The DBELO evaluates the evidence based upon factors such as:

- The actual dollar difference between the quotes received by the bidder;
- The percentage difference between the quotes received by the bidder; and
- The percentage the quotes represent of the overall contract.

Once the evaluation is performed, the DBELO notifies the Office Engineer of the determination.

If the bidder to whom ODOT proposes to award the contract is able to demonstrate GFEs, ODOT may reduce the contractual DBE goal to the bidder's proposed adjusted goal. Acceptance by ODOT of the bidder's proposed adjusted goal does not release the bidder from its contractual obligation to continue to make efforts throughout the duration of the project to utilize DBEs on the project.

If the DBELO determines that the bidder to whom ODOT proposes to award the U.S. DOT assisted contract fails to meet the requirements stated above, the bidder is provided an opportunity for administrative reconsideration. The Office Engineer notifies the bidder by fax within two working days following the bid opening.

As part of this reconsideration, the bidder has the opportunity to provide written documentation or argument concerning whether it met the goal or made adequate good faith efforts to do so. The bidder has two working days within which to present their case. The decision on reconsideration is made by an official 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. The determination is made by the General Counsel or his designee. The General Counsel or his designee provides a decision prior to the award of the U.S. DOT assisted contract or the award is delayed.

The bidder has the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

A written decision on reconsideration is sent to the bidder, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

The result of the reconsideration is not administratively appealable to the U.S. DOT.

All bidders shall submit with their bid, completed, signed, and notarized pages 16 of 17 and 17 of 17 of the DBE Special Provisions. All bidders shall also complete and submit the DBE pages of the Expedite System (electronic bidding). All listed DBE firms must be currently certified by ODOT as eligible to participate in the DBE program. DBEs also must be listed only in categories of work as shown in the DBE Directory for that month's bid opening. Failure to submit the forms render the bid non-responsive. In the event of a conflict between the Expedite, DBE submission and pages 16 of 17 and 17 of 17, the written submissions on pages 16 of 17 and 17 of 17 control.

The DBEs submitted on this form shall be considered binding and changes of committed DBEs may only be made after the contract is fully executed, and may only be changed through the procedures established in the DBE Program Manual, VII Contract Performance, Substitution/Replacement of DBEs.

The steps taken by the bidder to obtain DBE participation shall be documented and shall include, but are not limited to the good faith efforts found in Appendix B.

The DBELO reviews all apparent low bidders' bid proposals to determine compliance with this section. It is the contractor's responsibility to submit the information necessary for ODOT to ascertain compliance with the good faith efforts requirement. Extra cost involved in finding and utilizing DBEs is not accepted as an adequate reason for the bidder's failure to meet the project DBE goal as long as such costs are not unreasonable.

The bidder must submit to the Office Engineer Division written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment. This shall be in the

form of DBE Confirmation of Intent to Subcontract (DBE-6). The DBE-6 shall be submitted for each DBE listed in the bidder's proposal to meet the advertised goal. This form, along with the DBE's quote listing line items, quantities, and dollar value, must be received no later than ODOT's close of business on the Wednesday following the bid opening. Otherwise, the bid shall be considered non-responsive and shall be rejected by ODOT. The Office Engineer Division and the Civil Rights Division, External Programs, will review each of the apparent low bidders' submittals to determine compliance with 49 CFR §26.53(b)(2)(v).

In instances where a successful bidder's DBE commitment exceeds the actual DBE contract goal, the advertised goal of the contract becomes the contractual obligation.

Bidders' Action - Preconstruction

Consulting engineers for negotiated contracts are selected under the provisions of Oklahoma statutes, Title 61, Section 62, et. seq. Other services are selected as provided for under Oklahoma statutes, Title 74, Section 85.12(3). Consultant firms shall refer to ODOT's Guidelines for the Administration of Consultant Contracts, Chapter 7 Disadvantaged Business Enterprise Participation for guidance.

Once a U.S. DOT assisted contract is negotiated, the consultant provides ODOT information as to the proposed DBE participation in the contract, including the name, subcontract amount, and the type of work to be performed by the DBE subconsultant. The consultant reports to the Project Management Division amounts paid to DBE subconsultants each time a claim is received. The designees forward a report stating the amounts paid to consultants and amounts paid to DBEs to the Civil Rights Division, External Programs, on a quarterly basis.

VII. CONTRACT PERFORMANCE



Counting DBE Participation Toward the Goal 26.55

When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward the contract goal. The entire amount of that portion of a contract that is performed by the DBE's own forces is counted, including the cost of supplies and materials obtained by the DBE for the work on the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE purchases or leases from a prime contractor or its affiliate).

Fees or commissions charged by a DBE firm for providing bona fide services, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a U.S. DOT assisted contract, count toward the goal, provided those fees are determined to be reasonable and not excessive compared with fees customarily allowed for similar services.

When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the clearly defined portion of the work that the DBE performs with its own forces may be counted toward the goal.

Only expenditures to a DBE contractor who performs a commercially useful function may be counted toward a DBE goal.

Commercially Useful Function 26.55(b) (1)

A DBE performs a Commercially Useful Function (CUF) when it is responsible for the execution of the work of its contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. The DBE must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

To determine whether a DBE is performing a CUF, ODOT evaluates the amount of work subcontracted, industry practices, whether the amount the firm is to be paid is commensurate with the work it is actually performing and the DBE credit claimed, and other relevant factors.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is acting as a pass-through, ODOT examines similar transactions, particularly those in which DBEs do not participate. This may also constitute fraud or deceit and subject both the DBE and those acting in consent with the DBE to criminal, civil, and administrative penalties.

When a DBE is presumed not to be performing a CUF, the DBE may present evidence to rebut this presumption to Civil Rights Division - External Programs. ODOT may determine that the firm is performing as required, given the type of work involved and normal industry practices.

While CUF is not a certification issue, if it is determined that there exists a pattern of a DBE not performing a commercially useful function, the firm's eligibility may be reviewed to determine if it continues to meet the control and independence standards of the regulation.

Commercially useful function reviews will be conducted by Residency personnel on each DBE firm on all federal-aid projects. The Project Site CUF Review form and instructions may be found in Appendix F.

The Use of Joint Checks

A joint check is a two party check between a DBE, a prime contractor, and the regular dealer of materials/supplies. Typically, the prime contractor issues the check as payor to the DBE and supplier jointly to guarantee payment to the supplier for materials/supplies used by the DBE.

A joint check may be used when the following conditions are met:

- The second party (typically the prime contractor) acts solely as a guarantor;
- The DBE must release the check to the supplier;
- The use of joint checks is a commonly recognized business practice in the industry; and
- ODOT approves the practice before it is used.

The use of joint checks will not be approved if it conflicts with the CUF requirements of 49 CFR Part 26.55. All aspects of the CUF requirements must be fulfilled by the DBE to include negotiating the purchase and delivery of the materials required for the performance of the contract.

The use of joint checks should be short term in nature and there shall be no exclusive ongoing relationship between one prime and one DBE in the use of joint checks, which may bring the DBE's independence into question. ODOT closely monitors the use of joint checks in order avoid abuse.

The DBE shall notify the Civil Rights Office, External Programs, prior to the use of joint checks, providing full and prompt disclosure of the circumstances and a request for approval. The Civil Rights Office will review the request and determine whether approval will be granted.

Lease or Use of Prime Contractors' Equipment

In determining whether a DBE is an independent business, ODOT must scrutinize relationships with non-DBE firms in such areas as sharing of personnel, facilities, and equipment. The regulation allows a DBE to lease equipment necessary to perform work, where the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the DBE firm.

49 CFR Part 26.55(a) (1) does not allow supplies purchased or equipment leased from a prime contractor to count toward the DBE goal. If a DBE uses or leases equipment from the prime contractor, the prime contractor cannot claim credit for the value of that equipment lease toward

the DBE goal. If a DBE uses a prime contractor's equipment, it shall be for an unusual circumstance of limited duration, and the DBE shall provide ODOT a written agreement between the DBE and prime contractor.

The DBE must notify the Civil Rights Division, External Programs, of their request to use a prime contractor's equipment, and provide a written agreement between the DBE and prime contractor which states the type of equipment, the cost involved, the duration of the lease or rental, and whether the equipment is provided with an operator or not.

Trucking 26.55(d)

The certified 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. It is the responsibility of the DBE trucking firm to provide a list to the prime contractor of trucks to be used on each contract for which DBE participation is credited. This list shall be specific to the contract and indicate whether the truck is owned or leased by the DBE, or owned or leased by a non-DBE owner-operator or trucking firm. It is the responsibility of the DBE to track participation and provide proper documentation to the prime contractor for project goal crediting purposes.

The DBE must, itself, own and operate at least one fully licensed, insured, and operational truck used on the contract.

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.

The DBE may lease trucks from another DBE firm, including owner-operators certified as DBEs. 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.

The DBE may also lease trucks from a non-DBE firm or non-DBE owner-operators. The DBE who leases from a non-DBE is entitled to credit for the total value of the transportation services provided by the non-DBE lessees not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement. ODOT has received approval from the appropriate operating administration to implement this counting procedure.

Example for matching credit: DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. With respect to the other two trucks provided by Firm Z, DBE credit could be awarded only for the fees or commissions pertaining to those trucks Firm X receives as a result of the lease with Firm Z.

The 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.

Consistent with normal industry practice, a DBE may lease trucks from a regular equipment dealer whose primary business is sales and leasing of trucks (as opposed to a trucking firm or individual). This cannot be on an ad-hoc basis, but must be long term and the trucks must be under the control of the DBE firm and must be operated in a manner consistent with the CUF requirements of the regulation. The total value of transportation services performed using such trucks can be credited toward meeting a contract goal.

Manufacturers and Material Suppliers 26.55(e)

If the materials or supplies are obtained from a certified DBE manufacturer, 100 percent of the cost of the materials or supplies will be counted toward the DBE goal. A manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials required under the contract as described by the specifications.

If the materials or supplies are purchased from a certified DBE regular dealer, 60 percent of the cost of the materials or supplies is counted toward the DBE goal. 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 described by the specification and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

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. 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 for in the above paragraph if the person both owns and operates distribution equipment for the product. Any supplementing of the regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis. The practice of supplying liquid asphalt as a DBE for credit towards a project goal is not standard industry practice and does not fulfill the CUF requirements of the regulation. This category of work is not considered for DBE credit. ODOT reviews each request for consideration as a material supplier or manufacturer for DBE credit to determine whether the particular activity constitutes a commercially useful function prior to allowing credit towards DBE goals.

In order for a firm to qualify as a DBE supplier of metal and/or concrete pipe, the firm must also fabricate the pipe. Metal or concrete pipe is specialty pipe, which is project specific and is inspected during the manufacturing process. This arrangement provides for no warehousing of metal or concrete pipe, and essentially requires the manufacturer to be the supplier. Merely ordering pipe from the fabricator and in turn selling it to contractors is not consistent with normal industry practice. Contractors normally purchase pipe directly from the manufacturer, with no use for an intermediary. Supplying metal or concrete pipe is viewed as brokering, and is considered

inconsistent with DBE program requirements. Each request from a DBE to perform work as a supplier or manufacturer will be closely scrutinized to determine whether the practice is consistent with standard industry practice, or merely established to artificially inflate the DBE goal participation.

Packagers, brokers, manufacturers' reps, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this section.

With respect to materials purchased from a DBE who is not a manufacturer or regular dealer, credit may be allowed for the 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 it is determined the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. ODOT does not count any portion of the cost of the materials and supplies themselves toward DBE goals.

Substitution/Replacement of DBEs 26.53 (f) (1)

Substitution or replacement of a DBE committed to as part of the bid submitted to ODOT is only permitted or allowed after award and execution of the U.S. DOT assisted contract, and then only in compliance with the procedures established in this part.

A prime contractor may not terminate, for convenience; a DBE (or an approved substitute DBE firm) listed in their contract and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without ODOT's prior written consent. If a DBE is terminated, the prime contractor must provide evidence that the DBE was unwilling or unable to complete the work of their contract prior to replacing the DBE. The prime contractor should be able to document actions that he/she has taken to remedy the situation prior to termination of the DBE. ODOT reviews the documentation and either approves or denies any termination and replacement of a DBE whose work is part of the contractor's commitment to meet a project goal.

In order for ODOT to provide written consent, the prime contractor must document that there is good cause to terminate the DBE firm. Good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;
2. The listed DBE subcontractor fails or refuses to perform the work of its' subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work or the subcontract results from the bad faith or discriminatory action of the prime contractor;
3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements;
4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE subcontractor is ineligible to work on federally assisted or state projects because of suspension or debarment proceedings;
6. ODOT has determined that the listed DBE subcontractor is not a responsible subcontractor;

7. The listed DBE subcontractor voluntarily withdraws from the project and provides ODOT written notice of its' withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;
10. Other documented good cause that ODOT determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract in order to self-perform the work for which the DBE was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

Before transmitting its request to ODOT to terminate and/or substitute a DBE subcontractor, the prime contractor must give notice in writing to the DBE subcontractor, with a copy to ODOT, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise ODOT and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why ODOT should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), a shorter response period may be acceptable.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions or substitutions for DBE firms listed in the bidder's proposal in order to meet the contract DBE goal.

When a DBE is terminated, or fails to complete the subcontracted work for any reason, the prime contractor must make GFEs to find another DBE to substitute for the original DBE. These GFEs are directed at finding another DBE to perform at least the same amount of work (not necessarily the same work) under the contract as the DBE that was terminated, to the extent needed to meet the DBE goal established in the contract.

If the contractor obtains a substitute DBE, the contractor notifies the Resident Engineer and provides the Construction Division with copies of the substitute's subcontract, the Notification Change of DBE Participant (DBE Form 4), and supporting documentation. The Civil Rights Division, External Programs, and the State Construction Engineer, or his designee, review the submittal and shall either approve or deny all substitutions prior to the substitute beginning work.

If the contractor is unable to replace the DBE with another DBE, then the contractor must provide evidence that they have made a GFE (Appendix B) to obtain another DBE. The prime contractor must submit to the Construction Division a Request for Waiver of DBE Requirements (**DBE Form 5**) along with documentation to support they have made a good faith effort to obtain another DBE. The Assistant Division Manager, Civil Rights, and the State Construction Engineer, or his designee, review the evidence of good faith efforts and make a determination.

If a contractor fails to comply with this section, appropriate administrative remedies may be taken, as outlined in the section titled Administrative Remedies.

Prompt Payments 26.29

Prime contractors shall pay all subcontractors for satisfactory performance of their contracts no later than 15 days after receipt of each progressive payment from ODOT. ODOT publishes the progressive estimates on its' website. Subcontractors may access these estimates to determine if their quantities have been placed on the estimate and when the estimate was processed. Further, the prime contractor must promptly return any retainage held to the subcontractor within 15 days after the subcontractor's work is satisfactorily completed, whether or not the prime contractor's work is complete. The term "satisfactorily completed" is defined for the purpose of this prompt return of retainage provision as when; 1) ODOT finds the subcontractor's work completed in accordance with the Plans and Specifications; 2) any required paperwork, including material certifications, payrolls, etc., have been received from the subcontractor and approved by ODOT; and 3) ODOT has determined the final quantities on the subcontractor's portion of the work. Failure to comply with the prompt payment and return of retainage provisions of the contract may result in sanctions under the contract, as listed in Administrative Remedies.

The Contract Compliance Officer(s), Civil Rights Division, review prime contractors for prompt payment and return of retainage compliance as part of the external contractor compliance review program. During each review, all subcontractor payment information is reviewed and compared to the progressive estimates paid to the prime contractor. If it is determined that the prime contractor has failed to fulfill their obligation under the contract, the process established for prompt payment complaints is enforced. If the contractor fails to comply with these provisions, a Show Cause Notice is issued. In addition, the Operations Review & Evaluation Division reviews contractors for prompt payment and return of retainage compliance during the course of routine audits.

Any delay or postponement of payment may take place only for good cause and with ODOT's written approval. The explanation of good cause from the prime contractor must be made in writing to the Resident Engineer. ODOT provides internal controls to expedite the determination and processing of the final quantities for the satisfactorily completed subcontracted portions of the contract.

Prime contractors must include in their subcontract agreements notice to subcontractors of their right to prompt payment and return of retainage under 49 CFR Part 26.29. To ensure the prompt return of retainage, the subcontractor may request in writing to the Resident Engineer that their portions of the contract be considered completed in accordance with the specifications, and that the final quantities be determined. The subcontractor must be able to state that any required paperwork, including material certifications, payrolls, etc., for their portion of the work, has been submitted to the Residency.

The Resident Engineer has 14 days to respond to the subcontractor, with a copy to the prime contractor for their notification. The Resident Engineer's response should be that they have received the request and are:

1. Working on the request including the residency, division, and material certification audits and scheduling the semi-final (note that for portions of the contract addressed

by a semi-final, any damage to the subcontractor's portion of the work caused by the completion of the remainder of the contract would need to be corrected), or

2. Working on the project as a whole, but will notify them when the final quantities have been determined (this is allowable only when the entire project has been completed and is in the finalization process).

A copy of the final quantities for a subcontractor's portion of the project should be disbursed by the Residency to the prime contractor and the subcontractor upon completion of the semi-final, all levels of audits and when assured that all paperwork has been received. For instances where subcontractors have not submitted a written request for their portion of the work to be considered completed, once final quantities are determined, they should be disbursed by the Residency to all approved subcontractors when they are sent to the prime contractor. The prime contractor must then make prompt return of retainage within 15 days in accordance with the contract provisions.

Prime contractors must include in their subcontracts language providing that prime contractors utilize an approved alternative dispute resolution process to resolve payment differences. ODOT provides the parties with a list of approved mediators and arbitrators. The parties must agree on a mediator or arbitrator within 5 days. The cost of mediation or arbitration is borne by the parties. ODOT provides an approved mediator at no charge for payment disputes between DBE subcontractors and prime contractors. If the parties cannot agree to use one of the mediators from the list provided by ODOT, then the subcontractor and prime contractor are responsible for the costs incurred for the services of another mediation service.

Prompt Payment complaints will be investigated by Civil Rights, External Program, who will maintain a database and file on all complaints received. The complaint form and process will be found in Appendix F.

Project Goal Waivers

In the case where a contractor cannot meet the DBE goal of a contract after the contract has been executed, it should request a reduction of that portion of the DBE goal that will not be met. The request is subject to the following:

- A request for waiver is initiated by the prime contractor at the time it reasonably knows that despite good faith efforts, the contract goal will not be achieved. The request is in writing and documents all good faith efforts made to meet the goal.
- The request for waiver is submitted for review to the Resident Engineer and is submitted on the Request for Waiver of DBE Requirements (DBE Form 5). The Resident Engineer forwards the request to the Construction Division. DBE goal waivers are approved or denied by the Assistant Division Manager, Civil Rights, and the State Construction Engineer, or his designee.
- If at the completion of the project the contractor has failed to meet the DBE goal, does not have an approved waiver, and has not demonstrated good faith efforts to meet the goal; the contractor is assessed liquidated damages for the difference between the contract goal and

the actual DBE participation achieved. ODOT shall deduct the liquidated damages from subsequent progressive estimates. In the event insufficient earnings remain for the deduction of liquidated damages, ODOT may claim against the contractor's bond, suspend the contractor under performance suspension, withhold further proposals, and/or suspend prequalification.

- In those instances when the goal is not met due to a change in quantity, which occurs through no fault of the contractor, but due to ODOT, a goal waiver is not required of the contractor. Instead, a brief explanation from the Residency at the time the DBE Final Payment Form (DBE Final Form 3) is submitted, along with the statement of overruns and underruns, suffices as documentation.

Administrative Remedies

The following administrative remedies may be invoked when the federal DBE contractual requirements are not met by a contractor, and if the contractor has failed to provide evidence of a sufficient GFE to meet said provisions:

- Suspension of processing progressive estimates;
- Liquidated damages;
- Refusal to issue proposals;
- Suspension of work on the project;
- Suspension of prequalification;
- Debarment; and
- Removal of certification.

In addition, ODOT may take enforcement action as set forth in 49 CFR Part 26.107, to include suspension and/or debarment. The U.S. DOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action.

Record Keeping Requirements

The prime contractor keeps such records as are necessary to determine compliance with the DBE contract obligations. The records kept by the contractor include:

4. The name(s) of DBEs or other subcontractors, the type of work being performed, and payments for work, services, and procurement.
5. Documentation of correspondence, verbal contacts, telephone calls, etc., to obtain services of DBEs on the project.
6. The prime contractor shall maintain a copy of the DBE trucking firm's list of trucks to be used on that project. This shall be provided to the prime by the DBE prior to the DBE beginning the work of their hauling agreement. This list is sent along with the actual hauling agreement to the Construction Division for approval, and the prime contractor furnishes it to the Resident Engineer for monitoring activities.

Upon request, the prime contractor submits all contracts, subcontracts, agreements, and purchase orders executed with DBEs with reference to the records referred to above, and in such manner, form, and content as prescribed by ODOT. All such records are maintained by the prime contractor for at least three (3) years after project acceptance by ODOT. These records are available for inspection by Federal and State authorities.

Once the project begins, prime contractors are required to submit Monthly Payment Log forms (DBE forms 2A or 2B) to the Resident Engineer each month for the duration of the project. The DBE Form 2A, completed by non-DBE prime contractors, records payments made to all DBE firms providing materials or services to the project, whether listed in the Contract to meet a project goal or not. The Form 2B, completed by DBE Prime Contractors, records payments made to all non-DBE subcontractors. Listed on the forms should be all payments made, including final payment and return of retainage. These forms must be received by the Resident Engineer no later than the 15th of the following month and payment amounts shall be entered into Site Manager by residency personnel.

For contracts with a specified project DBE goal, the contractor submits to the Resident Engineer a DBE Final Payment Report (**DBE Form 3A**). The contractor lists all DBEs used on the contract and summarizes total amounts paid to DBEs and the project goal amount for each DBE. If the contractual goal is not met, the project goal waiver procedures set forth in Section VII, Contract Performance Goal Waivers, apply. Final payment amounts are entered into Site Manager by residency personnel. All DBE payment forms are forwarded along with the final estimate to the Construction Division for verification by Civil Rights, External Programs.

Complaint Procedure

A complaint may be initiated by any interested party who believes the terms of ODOT's approved DBE Program have been violated. Some of the program areas giving rise to complaints include, but are not limited to, the encouragement of fronting, brokering, program abuse, discrimination, failure to make prompt payment, certification issues, or failure to perform a CUF. Once ODOT receives a complaint, the FHWA Oklahoma Division will be notified of such receipt. When ODOT completes the review and investigation and makes a determination or conciliation recommendation, the FHWA Oklahoma Division will be notified.

If the issue is one that involves contract performance, ideally, it should be resolved at the Residency level. Most often, the Resident Engineer, or his direct reports, have personal knowledge of the situation and are able to resolve problems at the earliest stage possible. Civil Rights, External Programs, should be notified of all prompt payment issues, whether or not they are resolved in the field. If the Resident Engineer is unable to resolve the issue, or if the issue involves other program matters, the Civil Rights Division, External Programs, accepts written complaints (Appendix F) and proceeds to conduct an investigation and notify the alleged violator of the complaint. The investigator prepares a report of the facts of the case, findings, and proposed recommendations and forwards it to the Assistant Division Manager for Civil Rights. A compliance conference may then be scheduled to discuss the results of the investigation and give the parties involved an opportunity to present their case.

If ODOT determines that the issue involves discrimination under Title VI, the matter is referred to the Title VI Specialist, Civil Rights Division, for a formal investigation.

If ODOT is unable to make a determination or resolve the complaint to the satisfaction of parties involved, the matter may be referred to mediation. The parties involved may also elect to request mediation at any time.

If ODOT determines from the evidence that the contractor and/or DBE is in non-compliance with 49 CFR Part 26, ODOT notifies the parties and initiates enforcement action. Administrative remedies, as discussed, above may be enforced.

VIII. MONITORING



Project Level

Resident Engineers, or personnel under their supervision, or Consultant Engineers, monitor prime contractors and DBEs for DBE participation and CUF. In administering the contract, ODOT field personnel ensure a CUF review is performed on each DBE subcontractor performing work on a federally assisted project by completing the Project Site CUF Review. This form will be submitted with the final DBE form (3A) to the Construction Division. Civil Rights personnel will review the forms to ensure the DBE has performed a CUF and the contract goal has been (or is projected to be) met. Residency personnel will notify the Civil Rights Division if they encounter a situation in which the DBE is not performing a CUF on a project.

Residency personnel ensure the DBE Monthly Payment Log forms (**DBE Form 2A or 2B**) and the DBE Final form (**DBE Form 3A**) are completed by the prime contractor and received in a timely manner (by the 15th of the following month in which the payments were made). The monthly payments must then be entered into Site Manager prior to running the next “end of the month” estimate.

Any time prompt payment is not made, the Residency personnel determine the cause and attempt to resolve any problems in the field. All prompt payment issues shall be reported to Civil Rights. If the Residency personnel are unable to reach resolution, such complaints are forwarded to Civil Rights for investigation.

Residency personnel, at the end of the project, review the amounts listed on the DBE Final form (Form 3A) to ensure the contract goal was met, and then forward the form to the Construction Division for processing. If the contract goal is not met due to an underrun or deletion of quantities by ODOT, a brief explanation is attached, along with the report of underruns/overruns. If the goal is not met by the prime contractor for reasons other than deletions or underruns, Residency personnel ensure a Request for Waiver of DBE Requirements, along with supporting documentation, is attached to the summary.

If, during the life of the contract, Residency personnel become aware that a DBE goal is not being met, they immediately take steps to ensure the appropriate action is taken by the prime contractor to fulfill the goal. It is the responsibility of the Resident to ensure the contract provisions are enforced during the project and any violations or problems should be resolved in the field in an expedient manner. If the Resident Engineer is unable to resolve issues between parties within 30 days, the Resident Engineer may contact Civil Rights, External Programs for assistance, or refer the complaint to Civil Rights, who attempts to resolve the issue within 30 days. If unable to resolve the complaint, Civil Rights refer the parties to mediation or arbitration.

Civil Rights, External Programs

Civil Rights, External Programs are responsible for monitoring the contract performance for DBE participation. Duties include:

- Monitoring DBE performance for commercially useful function by reviewing all Project Site CUF Reviews;
- Monitoring and approving the Final Payment Forms to ensure the DBE contract goals met;
- Performing commercially useful function reviews at the Resident Engineer's request or when circumstances arise that require an independent review in the field;
- Investigating complaints of non-compliance, reporting findings and making recommendations for contract sanctions, when appropriate, to the Construction Engineer;
- Along with the State Construction Engineer, approving or denying goal waiver requests, substitutions, and GFEs (**DBE Form-5**);
- Providing assistance and guidance to DBEs, field personnel, and prime contractors on program requirements;
- Tracking payments made to DBEs on a monthly basis to ensure overall goal is being met;
- Conducting Prompt Payment Complaint investigations;
- Approval of all DBE goal commitments as to amount, eligibility, type of work, credit, and DBE participation;
- Review and approve or reject as insufficient, GFEs made by bidders at the time of the bid opening; and
- Review contractors for prompt payment and return of retainage compliance.

Construction Division

The Construction Division is responsible for administering the highway construction and maintenance contracts. To ensure compliance with the DBE Program and the Special Provisions of the contract, the Construction Division monitors U.S. DOT projects, to include, but not limited to:

- Approval of DBE subcontracts as listed in the contract, unless by approved substitution;
- Enforce all contract provisions, such as prompt payment, EEO provisions, etc;
- Determine and enforce contract sanctions to be taken upon recommendations of Civil Rights;
- Review complaints and coordinate investigations with Civil Rights and other personnel, as appropriate;
- Assist Resident Engineers in resolving contract administration problems in the field;
- Recommend mediation when necessary; and
- Assure that the FHWA 1273, prompt payment, return of retainage, and mediation requirements are in each subcontract.

Office Engineer Division

The Office Engineer Division enforces all relevant DBE program requirements prior to award of the contract. These include, but are not limited to:

- Include in the bid notice and contracts all appropriate DBE and EEO special provisions in contracts;

- Review proposals with goals for DBE participation and appropriate information;
- Assist Civil Rights in obtaining information for the Bidders' List; and
- Obtaining DBE-6 Confirmations and supporting documentation to confirm the bidder's DBE commitments.

IX. APPENDICES



APPENDIX A

Definition of Terms

49 CFR Part 26.5

Affiliation - has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121. Concerns are affiliates of each other when, either directly or indirectly; one concern controls or has the power to control the other; or an identity of interest between or among parties exists such that affiliation may be found. 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. Affiliation may also affect the issues of management, ownership, and control.

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

Contract - means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

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

Disadvantaged Business Enterprise or DBE - means a for profit small business concern 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 whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

Immediate family member - means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

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

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 commensurate with its ownership interest.

NAICS – North American Industry Classification System.

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

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. Airport concessionaires have an additional exclusion of assets used and/or encumbered for business financing as described in the Regulation.

Primary industry classification - means the four digit Standard Industrial Classification (SIC) codes designation which best describes the primary business of a firm.

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.

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

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

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

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 SBA regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b).

Socially and Economically Disadvantaged Individual - means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is an individual that a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis; any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged: Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Women, and any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

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

APPENDIX B

Good Faith Efforts 26.53

The steps taken by the bidder to obtain DBE participation shall be documented and shall include, but are not limited to the following good faith efforts: (*Appendix A to Part 26*)

- A. Soliciting through all reasonable and available means (e.g., attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.
(2) A bidder using good business judgment would consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and would take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not sufficient justification for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a prime contractor to perform the work of a contract with its own organization does not relieve the bidder of the responsibility to make good faith efforts. Prime contractors are not, however, required to accept higher quotes from DBEs to fulfill the DBE contract requirement if the price difference is excessive or unreasonable.
- E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within the industry, membership in specific groups, organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of DBE bids in the contractor's efforts to meet the project goal.

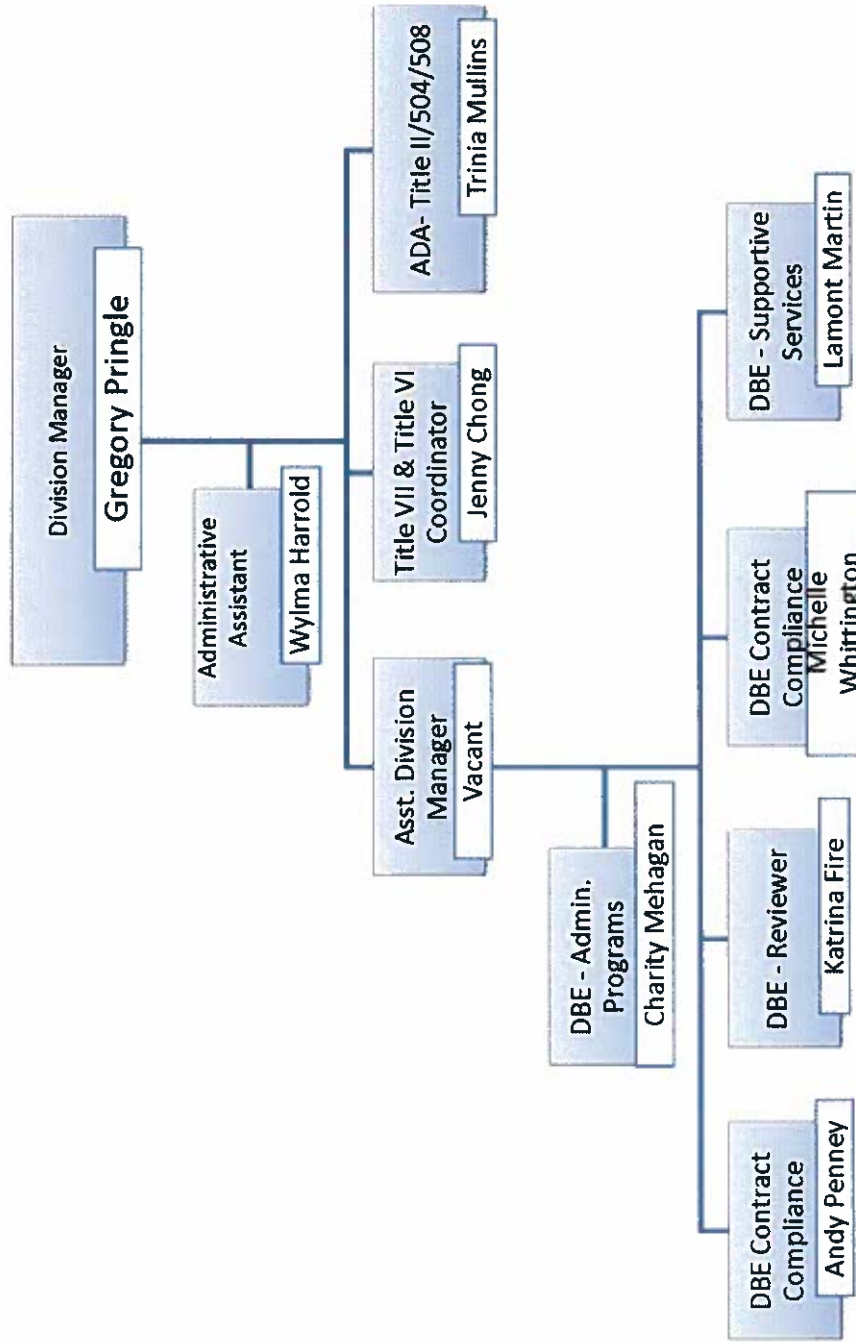
- F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance as required by the recipient or contractor.
- G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
- H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state, and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

APPENDIX C

Organizational Charts *(see following pages)*

OKLAHOMA DEPARTMENT OF TRANSPORTATION

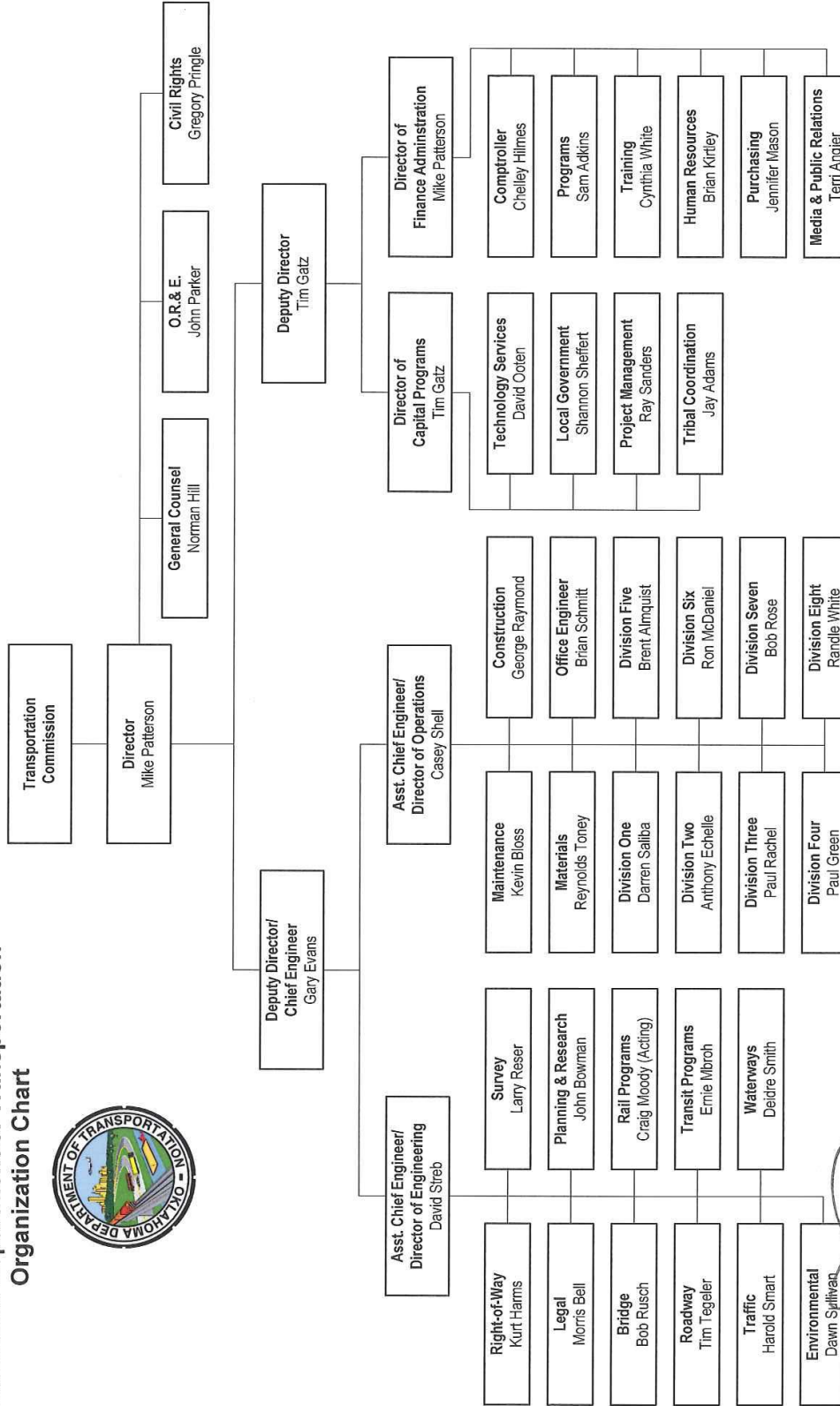
Civil Rights Division Organizational Chart



[Signature]
 J. Michael Patterson, Director
 Oklahoma Department of Transportation

13-Feb-14

Oklahoma Department of Transportation Organization Chart



5/16/13
Date

[Signature]
Mike Patterson, Director

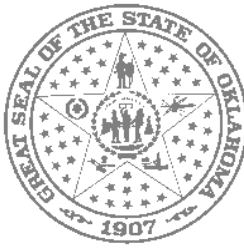


OKLAHOMA UNIFIED CERTIFICATION PROGRAM
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
49 CFR PART 26

UNIFORM CERTIFICATION APPLICATION

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice under 18 U.S.C. 1001.

The Oklahoma Department of Transportation (ODOT) ensures that no person or groups of persons shall, on the grounds of race, color, sex, age, national origin, disability/handicap, or income status, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by ODOT, its recipients, sub-recipients, and contractors.



OKLAHOMA UNIFIED CERTIFICATION PROGRAM (OUCP)

Dear Business Owner:

Thank you for your interest in participating in the Oklahoma Unified Certification Program (OUCP) for Disadvantaged Business Enterprises (DBE). As mandated by the United States Department of Transportation (U.S. DOT) in the DBE Program, 49 Code of Federal Regulations (CFR), Part 26, all U.S. DOT recipients of federal financial assistance must participate in a statewide UCP. The UCP is a "One-Stop Shopping" certification procedure that will eliminate the need for DBE firms to obtain certifications from multiple agencies within the state who are U.S. DOT recipients or grantees.

The UCP of Oklahoma is charged with the responsibility of certifying firms and compiling and maintaining a database of certified DBEs for U.S. DOT recipients, pursuant to 49 CFR Part 26. The Oklahoma Department of Transportation (ODOT) is the certifying agency for the OUCP and will process all applications and maintain the database of certified DBE firms for the state of Oklahoma.

Please complete the attached application if you wish to be considered for DBE certification and your business meets the following certification standards. You may return your completed application to:

Civil Rights Division - External Programs
Oklahoma Department of Transportation
200 N.E. 21st Street, Room 1-C-5
Oklahoma City, Oklahoma 73105
(405) 521-6046
1-800-788-4539

INSTRUCTIONS

Please complete all portions of the application, placing “N/A” next to items that are not applicable. Include all copies of documents requested on the application, and have the *Affidavit of Certification* and *Personal Net Worth Statement* notarized. Additional documentation may be requested if it is considered necessary to make a certification decision. Incomplete applications will not be processed until required documents are submitted. It is recommended that you retain a copy of all submitted documents for your records.

Remember: It is no longer necessary to apply at more than one agency for DBE certification under 49 CFR Part 26. If your firm meets the criteria for certification, it will be entered into the DBE Directory which is used by all U.S. DOT recipients and grantees in Oklahoma. Only firms currently certified as eligible DBEs may participate in the DBE programs of U.S. DOT recipients and grantees of Oklahoma.

For Out-of-State Firms: the Oklahoma UCP will not process a new application for DBE certification from a firm having its principal place of business in another state unless the firm has already been certified in that state. If your firm is located outside of Oklahoma and is currently certified as a DBE under 49 CFR Part 26 in your home state, please forward your completed certification packet, along with copies of your certification letter to the Oklahoma Department of Transportation.

ODOT will evaluate the information contained in the application, along with the facts learned during the on-site review to determine if your firm meets with eligibility criteria to qualify as a DBE.

You will be notified of the decision by letter. If the application is approved and you are certified as a DBE, your business will be added to the OUCP’s directory of certified DBEs. It will also give a brief description of the type of work you are certified to perform under the program. The directory of certified DBEs can be found on ODOT’s website at <http://www.okladot.state.ok.us>.

Denials/Appeals Process: If you are denied certification, you may request, in writing, a reconsideration of your application within 15 days of receipt of the letter of denial. When a firm is denied certification, you may not reapply for certification for a time period of 12 months from the firm’s receipt of the denial letter.

You may also appeal the denial of certification to the U.S. Department of Transportation within 90 days from the date you were notified that certification was denied. You should address your correspondence to the following:

U.S. Department of Transportation
Office of Civil Rights
1200 New Jersey Avenue, SE
Washington, DC 20590

APPENDIX A

DEFINITION OF TERMS

Affiliation - has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR Part 121. Concerns are affiliates of each other when, either directly or indirectly; one concern controls or has the power to control the other; or an identity of interest between or among parties exists such that affiliation may be found. 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. Affiliation may also affect the issues of management, ownership, and control.

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

Contract – means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them.

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

Disadvantaged Business Enterprise or DBE – means a for profit small business concern 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 whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

Immediate family member – means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, grandson, granddaughter, mother-in-law, or father-in-law.

Indian Tribe – means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides.

Joint Venture – means an association of a DBE firm and one or more other firms to carry out a single, for profit business enterprise, for which the parties combine their property, capital, efforts, skills and

knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

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

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

Primary industry classification – means the North American Industrial Classification System (NAICS) designation which best describes the primary business of a firm.

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.

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

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

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

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

Small Business Concern – means, with respect to firms seeking to participate as DBEs in DOT-assisted contracts, a small business concern as defined pursuant to section 3 of the Small Business Act and SBA regulations implementing it (13 CFR Part 121) that also does not exceed the cap on average annual gross receipts specified in 49 CFR Part 26.65(b).

Socially and Economically Disadvantaged Individual – means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is an individual that a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis; any individual in the following groups, member of which are rebuttably presumed to be socially and economically disadvantaged: Black Americans, Hispanic Americans; Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, Women, and any additional groups whose members are designated as

socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

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

Nature of Business: Check the type of work that your business performs. Should your firm's type of work not be listed, indicate service provided.

Construction Services

200 Grade and Drain

- _____ Clearing and grubbing
- _____ Excavation and embankment
- _____ Machine Grading
- _____ Salvaging topsoil
- _____ Other _____

200 Erosion and Sediment Control

- _____ Temporary Sediment Control
- _____ Slope Drains
- _____ Bale Barriers
- _____ Silt Fence and Silt Dike
- _____ Filters
- _____ Control Basins
- _____ Ditchliner Protection
- _____ Sodding and sprigging
- _____ Seeding
- _____ Mulching
- _____ Fertilizing
- _____ Mowing
- _____ Watering

300 Bases

- _____ Aggregate Base
- _____ Subbase
- _____ Lime treated subgrade
- _____ Rolling and sprinkling
- _____ Processing existing base and surface
- _____ Fly ash modified subgrade
- _____ Econocrete base
- _____ Bituminuous base
- _____ Other _____

400 Surfaces

- _____ Asphalt concrete pavement
- _____ Portland cement concrete pavement
- _____ Cold milling pavement
- _____ Concrete joint rehabilitation
- _____ Traffic bound surface course
- _____ Bituminous surface treatment
- _____ Tack coat
- _____ Prime coat
- _____ Rumblestrip
- _____ Diamond grinding
- _____ Other _____

500 Structures

_____ Bridge decks
_____ Concrete culverts
_____ Earth retaining systems and sound barrier walls
_____ Driven foundation piles
_____ Penetrating water repellent treatment
_____ Drilling shaft foundations
_____ Concrete repair
_____ Painting
_____ Timber structures
_____ Tie reinforcing steel
_____ Other _____

600 Incidental construction

_____ Riprap
_____ Gabions
_____ Curb and gutter, sidewalks, driveways, etc.
_____ Manholes, drop or curb inlets, and junction boxes
_____ Removal of structures and obstructions
_____ Pipe railing
_____ Guardrail
_____ Fences
_____ Monuments
_____ Concrete median barrier
_____ Edge drain
_____ Other _____

642 Contractor construction staking

700 Material Supplier – list below *

800 Traffic Control

_____ Highway lighting, signals, and signing – electrical
_____ Signs – non-electrical
_____ Delineators
_____ Traffic Stripe (Paint)
_____ Traffic Stripe (Plastic)
_____ Construction Zone Pavement Markings
_____ Construction Signing and Traffic Control
_____ Other _____

Manufacturer – list below *

Trucking – list below

Other services, not listed *

*See Nature of Business Page 4

Professional Services

Engineering

_____ Civil Engineering
_____ Electrical Engineering
_____ Geotechnical Engineering
_____ Environmental Engineering
_____ Other _____

Architectural

_____ Landscape Architecture
_____ Architectural Engineering

Accounting

_____ Accounting

Right-of-Way

_____ Acquisition
_____ Appraisal
_____ Relocation
_____ Utility
_____ Engineering

Other Professional Services – list below

Below indicate the geographic area in which your firm is willing to work

Facilities That Must Be Approved or Pre-certified by the **ODOT Materials Division** to Provide
Materials on ODOT Projects

Reinforcing Steel Fabricators
Structural Steel Fabricators
Reinforcing Steel Epoxy Coaters/Fabricators
Aluminum Sign Structure Fabricators
Precast Concrete Pipe & Box Suppliers
Precast Concrete Structure Suppliers
Precast/Prestressed Concrete Beam Suppliers
Corrugated Galvanized Metal Pipe Fabricators
Plastic (Polythene) Drainage Pipe Manufacturers
Hydraulic Cement Plants
Fly Ash Suppliers
Ground Granulated Blast Furnace Slag Suppliers
Coarse Aggregate Quarries
Fine Aggregate/Sand Pit Suppliers
Asphalt Binders

Facilities That Must Be Approved or Pre-certified by a **Residency Office** to Provide Materials on
ODOT Projects

Ready-Mix Concrete Suppliers
Asphalt Concrete Suppliers

Category of Work That Must Be Approved or Pre-Certified by the **Materials Division** Prior to
Performing Work on ODOT Projects

All Field Welders
Private Testing Laboratories

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

UNIFORM CERTIFICATION APPLICATION

ROADMAP FOR APPLICANTS



Should I apply?

- Is your firm at least 51%-owned by a socially and economically disadvantaged individual(s) who also controls the firm?
- Is the disadvantaged owner a U.S. citizen or lawfully admitted permanent resident of the U.S.?
- Is your firm a small business that meets the Small Business Administration's (SBA's) size standard and does not exceed \$20.41 million in gross annual receipts?
- Is your firm organized as a for-profit business?

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



Is there an easier way to apply?

If you are currently certified by the SBA as an 8(a) and/or SDB firm, you may be eligible for a streamlined certification application process. Under this process, the certifying agency to which you are applying will accept your current SBA application package in lieu of requiring you to fill out and submit this form. **NOTE: You must still meet the requirements for the DBE program, including undergoing an on-site review.**



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



Where can I find more information?

- U.S. DOT – <http://osdbuweb.dot.gov/business/dbe/index.html> (this site provides useful links to the rules and regulations governing the DBE program, questions and answers, and other pertinent information)
- SBA – <http://www.ntis.gov/naics> (provides a listing of NAICS codes) and <http://www.sba.gov/size/indextableofsize.html> (provides a listing of SIC codes)
- 49 CFR Part 26 (the rules and regulations governing the DBE program)

Under Sec. 26.107 of 49 CFR Part 26, dated February 2, 1999, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Part 29, take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.

Section 1: CERTIFICATION INFORMATION

A. Prior/Other Certifications

Is your firm currently certified for any of the following programs? <i>(If Yes, check appropriate box(es))</i>	<input type="checkbox"/> DBE	Name of certifying agency:
		Has your firm's state UCP conducted an on-site visit?
		<input type="checkbox"/> Yes, on ____/____/____ State: _____ <input type="checkbox"/> No
	<input type="checkbox"/> 8(a)	⊗ STOP! If you checked either the 8(a) or SDB box, you <u>may not</u> have to complete this application. Ask your state UCP about the streamlined application process under the SBA-DOT MOU.
<input type="checkbox"/> SDB		

B. Prior/Other Applications and Privileges

Has your firm (under any name) or any of its owners, Board of Directors, officers or management personnel, ever withdrawn an application for any of the programs listed above, or ever been denied certification, decertified, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? <input type="checkbox"/> Yes, on ____/____/____ <input type="checkbox"/> No If Yes, identify State and name of state, local, or Federal agency and explain the nature of the action:	
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Section 2: GENERAL INFORMATION

A. Contact Information

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

B. Business Profile

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

<input type="checkbox"/> Limited Liability Partnership <input type="checkbox"/> Limited Liability Corporation <input type="checkbox"/> Joint Venture <input type="checkbox"/> Other, Describe: _____						
(8) Has your firm ever existed under different ownership, a different type of ownership, or a different name? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, explain: _____						
(9) Number of employees: Full-time _____ Part-time _____ Total _____						
(10) Specify the gross receipts of the firm for the last 3 years: <table style="width: 100%; border: none;"> <tr> <td style="text-align: right;">Year _____</td> <td style="text-align: right;">Total receipts \$ _____</td> </tr> <tr> <td style="text-align: right;">Year _____</td> <td style="text-align: right;">Total receipts \$ _____</td> </tr> <tr> <td style="text-align: right;">Year _____</td> <td style="text-align: right;">Total receipts \$ _____</td> </tr> </table>	Year _____	Total receipts \$ _____	Year _____	Total receipts \$ _____	Year _____	Total receipts \$ _____
Year _____	Total receipts \$ _____					
Year _____	Total receipts \$ _____					
Year _____	Total receipts \$ _____					

C. Relationships with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office space, yard, warehouse, facilities, equipment, or office staff, with any other business, organization, or entity? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Other Firm's name: _____ Explain nature of shared facilities: _____													
(2) At present, or at any time in the past, has your firm:	<table border="1" style="width: 100%; border-collapse: collapse;"> <tr> <td style="padding: 2px;">(a) been a subsidiary of any other firm?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(b) consisted of a partnership in which one or more of the partners are other firms?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(c) owned any percentage of any other firm?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> <tr> <td style="padding: 2px;">(d) had any subsidiaries?</td> <td style="text-align: right; padding: 2px;"><input type="checkbox"/> Yes <input type="checkbox"/> No</td> </tr> </table>	(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No	(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No				
(a) been a subsidiary of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
(b) consisted of a partnership in which one or more of the partners are other firms?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
(c) owned any percentage of any other firm?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
(d) had any subsidiaries?	<input type="checkbox"/> Yes <input type="checkbox"/> No												
(3) Has any other firm had an ownership interest in your firm at present or at any time in the past? <input type="checkbox"/> Yes <input type="checkbox"/> No													
(4) If you answered "Yes" to any of the questions in (2)(a)-(d) and/or (3), identify the following for each (<i>attach extra sheets, if needed</i>): <table style="width: 100%; border: none; margin-top: 10px;"> <tr> <th style="text-align: left; width: 30%;"><u>Name</u></th> <th style="text-align: left; width: 30%;"><u>Address</u></th> <th style="text-align: left; width: 40%;"><u>Type of Business</u></th> </tr> <tr> <td>1.</td> <td></td> <td></td> </tr> <tr> <td>2.</td> <td></td> <td></td> </tr> <tr> <td>3.</td> <td></td> <td></td> </tr> </table>		<u>Name</u>	<u>Address</u>	<u>Type of Business</u>	1.			2.			3.		
<u>Name</u>	<u>Address</u>	<u>Type of Business</u>											
1.													
2.													
3.													

D. Immediate Family Member Businesses

Do any of your immediate family members own or manage another company? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, then list (<i>attach extra sheets, if needed</i>):				
<u>Name</u>	<u>Relationship</u>	<u>Company</u>	<u>Type of Business</u>	<u>Own or Manage?</u>
1.				
2.				

Section 3: OWNERSHIP

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

A. Background Information

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

B. Ownership Interest

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

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

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

Section 4: CONTROL

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

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

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

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

(4) Do any of the persons listed (1) and/or (2) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)? ☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____
Nature of Business Relationship: _____

B. Identify your firm's management personnel who control your firm in the following areas (If more than two persons, attach a separate sheet):

	Name	Title	Ethnicity	Gender
(1) Financial Decisions (responsibility for acquisition of lines of credit, surety bonding, supplies, etc.)	a.			
	b.			
(2) Estimating and bidding	a.			
	b.			
(3) Negotiating and Contract Execution	a.			
	b.			
(4) Hiring/firing of management personnel	a.			
	b.			
(5) Field/Production Operations Supervisor	a.			
	b.			
(6) Office management	a.			
	b.			
(7) Marketing/Sales	a.			
	b.			
(8) Purchasing of major equipment	a.			
	b.			
(9) Authorized to Sign Company Checks (for any purpose)	a.			
	b.			
(10) Authorized to make Financial Transactions	a.			
	b.			

(11) Do any of the persons listed in (1) through (10) above perform a management or supervisory function for any other business? ☐ Yes ☐ No

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

(12) Do any of the persons listed in (1) through (10) above own or work for any other firm(s) that has a relationship with this firm (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)?
☐ Yes ☐ No

If Yes, identify for each: Firm Name: _____ Person: _____
 Nature of Business Relationship: _____

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

(1) Equipment

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

(2) Vehicles

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

(3) Office Space

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

(4) Storage Space

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

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

If Yes, explain: _____

E. Financial Information

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

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

(e) Bonding limit: Aggregate limit \$ _____ Project limit \$ _____

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

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

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

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

H. List current licenses/permits held by any owner and/or employee of your firm (e.g. contractor, engineer, architect, etc.)(attach additional sheets if needed):

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

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

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

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

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

AFFIDAVIT OF CERTIFICATION

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

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

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

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

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

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

I agree to provide written notice to the recipient agency or Unified Certification Program (UCP) of any material change in the information contained in the original application within 30 calendar days of such change (e.g., ownership, address, telephone number, etc.).

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

I hereby certify that I am a (circle all that apply):

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

I have held myself out as a member of that group and have acted as a member of that group. I certify that I am an owner of the company seeking DBE certification and that I have been subjected to racial or ethnic prejudice or cultural bias within American society because of my identity as a member of the above circled group.

I further certify that my personal net worth does not exceed \$750,000, and that my ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially and economically disadvantaged.

I declare, under penalty of perjury, that the information provided in this application and supporting documents relating to my disadvantaged status and me is true and correct.

Signature: _____

Date: _____

NOTARY CERTIFICATE

STATE OF _____

COUNT OF _____

My Commission Expires

Notary Public

My Commission Number

DBE UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

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

All Applicants

- ☐ Work experience resumes (that include places of ownership/employment with corresponding dates and duties performed), for all owners, officers, directors, members, managers of your firm
- ☐ Personal Financial Statement (form available with this application)
- ☐ Personal tax returns for the past three years, if applicable, for each owner claiming disadvantaged status. Include all schedules and W2's.
- ☐ Your firm's tax returns (gross receipts) and all related schedules for the past three years
- ☐ Documented proof of contributions that clearly shows the source of funds used to acquire ownership for each owner (*e.g. both sides of cancelled checks*)
- ☐ Your firm's signed loan agreements, security agreements, and bonding forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ List of equipment leased and signed lease agreements
- ☐ List of construction equipment and/or vehicles owned and titles/proof of ownership
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past two years
- ☐ Year-end balance sheets and income statements for the past three years (*or life of firm, if less than three years*); a new business must provide a current balance sheet and income statement.
- ☐ All relevant licenses, license renewal forms, permits, and haul authority forms
- ☐ DBE and SBA 8(a) or SDB certifications, denials, and/or decertifications, if applicable
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other compensation or remuneration) paid to all owners, officers, directors, members, managers of your firm
- ☐ Trust agreements held by any owner claiming disadvantaged status, if any.
- ☐ Current Payroll
- ☐ Proof of liability insurance and workers' compensation insurance, if applicable.

Partnership or Joint Venture

- ☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- ☐ Official Certificate of Incorporation (*signed by the state official*), and Articles of Incorporation filed with the State.
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement
- ☐ Minutes of all stockholders and board of directors meetings
- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Trucking Company

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

Regular Dealer

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

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

Civil Rights Division - External Programs
Oklahoma Department of Transportation

Complete this form for: (1) each socially disadvantaged proprietor, (2) each socially disadvantaged limited and general partner whose combined interest totals 51% or more, or (3) each socially disadvantaged stockholder making up 51% or more of voting stock.

Name Business Phone ()

Residence Address Residence Phone ()

City, State & Zip

Business Name of Applicant

PERSONAL FINANCIAL STATEMENT

As of _____, 20____

ASSETS	(Omit Cents)	LIABILITIES	(Omit Cents)
Cash on hand and in banks	\$ _____	Accounts Payable	\$ _____
Savings Accounts	\$ _____	Notes Payable to Banks and Others (Describe in Section 1)	\$ _____
IRA or Other Retirement Account	\$ _____	Installment Account (Auto)	\$ _____
Accounts and Notes Receivable	\$ _____	Installment Account (Other)	\$ _____
Life Insurance - Cash Surrender Value Only (Complete Section 7)	\$ _____	Loan on Life Insurance	\$ _____
Stocks and Bonds (Describe in Section 2)	\$ _____	Mortgages on Real Estate (Describe in Section 3)	\$ _____
Real Estate (Describe in Section 3)	\$ _____	Unpaid Taxes (Describe in Section 5)	\$ _____
Automobile(s) - Present Value	\$ _____	Other Liabilities (Describe in Section 6)	\$ _____
Other Personal Property (Describe in Section 4)	\$ _____		
Other Assets (Describe in Section 4)	\$ _____		
		Total Liabilities	\$ _____
Total Assets	\$ _____	Net Worth <i>(Total Assets minus Total Liabilities)</i>	\$ _____

Source of Income	Contingent Liabilities
Salary	As Endorser or Co-Maker
Net Investment Income	Legal Claims & Judgments
Real Estate Income	Provisions for Federal Income Tax
Other Income	Other Special Debt

Section 1. Notes Payable to Bank and Others *(Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)*

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

Section 2. Stocks and Bonds *(Use attachment if necessary. Each attachment must be identified as a part of this statement and signed.)*

Number of Shares	Name of Securities	Cost	Market Value	Date of Exchange	Total Value

Section 3. Real Estate Owned (List each parcel separately. Use attachment if necessary.
Each attachment must be identified as a part of this statement and signed.)

	Property A	Property C	Property C
Type of Property			
Address			
Date Purchased			
Present Value			
Original Cost			
Mortgage Balance			

Section 4. Other Personal Property and Other Assets. (Describe, and if any is pledged as security, state name and address of lien holder, amount of lien, terms of payment, and if delinquent, describe delinquency.)

Section 5. Unpaid Taxes (Describe in detail, as to type, to whom payable, when due, amount, and to what property, if any, a tax lien attaches.)

Section 6. Other Liabilities (Describe in detail.)

Section 7. Life Insurance Held (Give face amount and cash surrender value of policies - name of insurance company and beneficiaries.)

I authorize the Oklahoma Department of Transportation to verify the accuracy of the statements made in order to determine whether I meet the standards of economic disadvantage for participation in the DBE Program at the Oklahoma Department of Transportation. I certify that to the best of my knowledge the information provided is true, accurate, and complete.

Signature:	Title:	SSN:	Date:
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State of _____)
County of _____)

On ____ day of _____, 20____, before me appeared _____
(Owner's name)

to me personally known, and who, being duly sworn, did execute the foregoing document and did so as his or her free act and deed.

NOTARY PUBLIC _____

COMMISSION EXPIRES _____ SEAL

COMMISSION NUMBER _____

Annual Affidavit

AFFIDAVIT

The undersigned agrees to furnish the Oklahoma Department of Transportation any additional information which is deemed to be necessary to make an accurate determination of this business' eligibility as a Disadvantaged Business Enterprise under 49 CFR part 26 and understands that failure to provide any requested information shall result in a denial of certification or removal of eligibility. Any material misrepresentation or concealment will be grounds for termination of any contract which may be awarded, debarment, and formal initiating action under Federal or State laws concerning false statement.

Signature

Date

Title

On this ____ day of _____, 20____, before me appeared _____ to me personally known, who, being duly sworn, did execute the foregoing affidavit, and did state that he or she was properly authorized by _____ to execute the affidavit and did so as his or her free act and deed.

(SEAL)

My Commission Expires:

Notary Public

My Commission Number:

*If such changes have occurred, you must submit supporting documentation describing in detail the nature of such changes. Regardless, **you must submit supporting documentation of your firm's overall gross receipts in the form of a federal tax return or yearly financial statement along with this affidavit. You may mail this affidavit and supporting documentation to:**

Oklahoma Department of Transportation
Civil Rights Division - External Programs
200 N.E. 21st Street, Room 1-C-5
Oklahoma City, Oklahoma 73105-3204

OKLAHOMA DEPARTMENT OF TRANSPORTATION
BAMS/LAS - LETTING AND AWARD SYSTEM
SPECIAL PROVISIONS

CX00210B * DISADVANTAGED BUSINESS ENTERPRISES PROGRAMS

11-30-99

Rev. 06-06-11

POLICY STATEMENT

The Oklahoma Department of Transportation is committed to implementing the Disadvantaged Business Enterprise Program as mandated in 49 CFR Part 26. The stated objectives of the program are:

- * To ensure nondiscrimination in the award and administration of U.S. DOT assisted contracts;
- * To create a level playing field on which DBEs can compete fairly for U.S. DOT assisted contracts;
- * To ensure that the program is narrowly tailored in accordance with the applicable law;
- * To ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs;
- * To help remove barriers to the participation in U.S. DOT assisted contracts;
- * To assist in the development of DBE firms so that they may compete successfully in the marketplace outside of the DBE program.

Failure of the contractor, subcontractor, material supplier or service contractor to carry out the requirements set forth shall constitute a breach of contract, and after notification by the Department, may result in termination of the contract by the State or such action as the State deems appropriate.

BIDDER'S ACTION

When ODOT has established a Disadvantaged Business Enterprise (DBE) contract goal, ODOT will award a U.S. DOT assisted contract only to a bidder who makes good faith efforts to meet the goal.

All bidders shall, with the submissions of their bid, show their intent to meet or exceed the DBE goal established for the project, or propose an adjusted goal accompanied by their submission of good faith efforts. Failure to make the written assurance which includes the names of the DBEs used, the work they will perform, and the price for the work, or failure to demonstrate good faith efforts acceptable to the Department to meet or exceed the DBE goal shall render a bid non-responsive.

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If a bidder can not meet the established DBE goal, the bidder shall document and submit with their bid proposal, justification stating why he or she could not meet the established DBE goal and demonstrate its good faith efforts. To demonstrate good faith efforts to meet the DBE goal, the bidder shall document the steps taken to obtain DBE participation. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal which, by their scope, intensity and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not successful. ODOT will review and determine that the information is complete and accurate and adequately documents the bidder's good faith efforts before committing to the award of the contract to the bidder. ODOT will make a fair and reasonable judgement whether the bidder that did not meet the goal made adequate good faith efforts by considering the quality, quantity, and intensity of the different kinds of efforts that the bidder made. The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts.

If the bidder to whom ODOT proposes to award the contract is able to demonstrate good faith efforts, ODOT may reduce the contractual DBE goal to the bidder's proposed adjusted goal. Acceptance by ODOT of the bidder's proposed adjusted goal does not release the bidder from its contractual obligation to continue to make efforts throughout the duration of the project to utilize DBEs on the project.

If ODOT determines that the bidder to whom ODOT proposes to award the U.S. DOT assisted contract fails to meet the requirements stated above, the bidder will be provided an opportunity for administrative reconsideration. The bidder will be notified by fax within two working days following the bid opening.

As part of this reconsideration, the bidder will have the opportunity to provide written documentation or argument concerning whether it met the goal or made adequate good faith efforts to do so. The bidder will have two working days within which to present their case. The decision on reconsideration will be made by an official 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. The determination will be made by the General Counselor his designee. The General Counselor his designee will provide a decision prior to the award of the U.S. DOT assisted contract or the award will be delayed.

The bidder will have the opportunity to meet in person with the reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

A written decision on reconsideration will be sent to the bidder, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

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The result of the reconsideration is not administratively appealable to the U.S. Department of Transportation.

All bidders shall submit with their bid, completed, signed, and notarized pages 13 of 14 and 14 of 14 of the Special Provision. All bidders shall also complete and submit the DBE pages of the Expedite System (electronic bidding). All listed DBE firms must be currently certified by ODOT as eligible to participate in the DBE program. DBEs also must be listed only in categories of work as shown in the DBE Directory attached to the back of that month's ODOT Short Form Notice. Failure to submit the forms will render the bid non-responsive. In the event of a conflict between the Expedite DBE submission and pages 13 of 14 and 14 of 14, the written submissions on pages 13 of 14 and 14 of 14 will control.

The DBEs submitted on this form shall be considered binding and changes of committed DBEs may only be made after the contract is fully executed, and may only be changed through the procedures established in the DBE Program Manual, VII Contract Performance, Substitution/Replacement of DBEs.

The steps taken by the bidder to obtain DBE participation shall be documented and shall include, but is not limited to the good faith efforts found in this Special Provision.

It is the contractor's responsibility to submit the information necessary for ODOT to ascertain compliance with the good faith efforts requirement. Extra cost involved in finding and utilizing DBEs will not be accepted as an adequate reason for the bidder's failure to meet the project DBE goal as long as such costs are reasonable.

The bidder must submit to the Office Engineer Division written confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment. This shall be submitted in the form of DBE Confirmation of Intent to Subcontract (DBE-6). The DBE-6 shall be submitted for each DBE listed in the bidder's proposal to meet the advertised goal. This form, along with the DBE's quote listing line items, quantities, and dollar value, must be received no later than ODOT's close of business on the Wednesday following the bid opening. Otherwise, the bid shall be considered nonresponsive and shall be rejected by ODOT. The Office Engineer Division and the Civil Rights Division will review each of the apparent low bidders' submittals to determine compliance with 49 CFR §26.53(b) (2) (v).

In instances where a DBE is participating in a contract as a joint venture, the joint venture must submit the specific units of work which will be performed by the DBE joint venturer. The DBE joint venturer's portion of the contract work will be submitted as the Contractors' commitment and the advertised goal of the contract becomes the contractual obligation.

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In instances where a successful bidder's DBE commitment exceeds the actual DBE contract goal, the advertised goal of the contract remains the contractual obligation.

ASSURANCE OF NON-DISCRIMINATION

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

GOOD FAITH EFFORTS

The steps taken by the bidder to obtain DBE participation shall be documented and shall include, but are not limited to the following good faith efforts: (APPENDIX ~ TO PART 26)

- A. Soliciting through all reasonable and available means (e.g. attendance at pre-bid meetings, advertising and/or written notices) the interest of all certified DBEs who have the capability to perform the work of the contract. The bidder must solicit this interest within sufficient time to allow the DBEs to respond to the solicitation. The bidder must determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces.
- C. Providing interested DBEs with adequate information about the plans, specifications and requirements of the contract in a timely manner to assist them in responding to a solicitation.
- D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional agreements could not be reached for DBEs to perform the work.

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

E. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within the industry, membership in specific groups organizations, or associations and political or social affiliations are not legitimate causes for the rejection or non-solicitation of DBE bids in the contractor's efforts to meet the project goal.

F. Making efforts to assist interested DBEs in obtaining bonding, lines of credit or insurance as required by the recipient or contractor.

G. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.

H. Effectively using the services of available minority/women community organizations; minority/women contractors' groups; local, state and federal minority/women business assistance offices; and other organizations as allowed on a case-by-case basis to provide assistance in the recruitment and placement of DBEs.

CONTRACTOR ACTIONS AFTER AWARD OF THE CONTRACT

Counting DBE Participation Toward the Goal 26.55

When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward the contract goal. The entire amount of that portion of a contract that is performed by the DBE's own forces is counted, including the cost of supplies and materials obtained by the DBE for the work on the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE purchases or leases from a prime contractor or its affiliate).

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 U.S. DOT assisted contract, count toward the

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goal, provided those fees are determined to be reasonable and not excessive compared with fees customarily allowed for similar services.

When a DBE performs as a participant in a joint venture, the portion of the total dollar value of the contract equal to the clearly defined portion of the work that the DBE performs with its own forces may be counted toward the goal.

Only expenditures to a DBE contractor who performs a commercially useful function may be counted toward a DBE goal.

COMMERCIALLY USEFUL FUNCTION

A DBE performs a commercially useful function (CUF) when it is responsible for the execution of the work of its contract and is carrying out its responsibilities by actually performing, managing and supervising the work involved. The DBE must be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.

To determine whether a DBE is performing a CUF, ODOT will evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid is commensurate with the work it is actually performing and the DBE credit claimed, and other relevant factors.

A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is acting as a pass-through, ODOT will examine similar transactions, particularly those in which DBEs do not participate.

Use of Joint Checks

A joint check is a two party check between a DBE, a prime contractor, and the regular dealer of materials/supplies. Typically, the prime contractor issues the check as payor to the DBE and supplier jointly to guarantee payment to the supplier for materials/supplies used by the DBE.

A joint check may be used when the following conditions are met:

- * The second party (typically the prime contractor) acts solely as a guarantor
- * The DBE must release the check to the supplier
- * The use of joint checks is a commonly recognized business practice in the industry
- * ODOT approves the practice before it is used

The use of joint checks will not be approved if it conflicts with the commercially useful function (CUF) requirements of 49 CFR § 26.55. All aspects of the CUF requirements must be fulfilled by the DBE to include

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negotiating the purchase and delivery of the materials required for the performance of the contract.

The use of joint checks should be short term in nature and there shall be no exclusive ongoing relationship between one prime and one DBE in the use of joint checks, which may bring the DBE's independence into question.

The DBE shall notify the Civil Rights Office prior to the use of joint checks, providing full and prompt disclosure of the circumstances and a request for approval. The Civil Rights Office will review the request and determine whether approval will be granted.

Lease of Use of Prime Contractors' Equipment

The DBE may lease equipment necessary to perform work, where the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the DBE firm. 49 CFR § 26.55(a)(1) does not allow materials purchased or equipment leased from a prime contractor to count toward the DBE goal. If a DBE uses or leases equipment from the prime contractor, the prime contractor cannot claim credit for the value of that equipment lease toward the DBE goal. If a DBE uses a prime contractor's equipment, it shall be for an unusual circumstance of limited duration, and the DBE shall provide the ODOT a written agreement between the DBE and the prime contractor.

TRUCKING

The certified 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.

The DBE must, itself, own and operate at least one fully licensed, insured, and operational truck used on the contract.

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.

The DBE may lease trucks from another DBE firm including owner-operators certified as DBEs. 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.

The DBE may also lease trucks from a non-DBE or non-DBE owner operators. The DBE who leases from a non-DBE is entitled to credit for the total value of the transportation services provided by the non-DBE lessee not to exceed the value of transportation services provided by DBE-owned trucks on the contract. Additional participation by non-DBE lessees receives credit only for the fee or commission it receives as a result of the lease arrangement.

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The 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.

Consistent with normal industry practice, a DBE may lease trucks from a regular equipment dealer whose primary business is sales and leasing of trucks (as opposed to a trucking firm or individual). This cannot be on an ad-hoc basis, but must be long term and the trucks must be under the control of the DBE firm and must be operated in a manner consistent with the CUF requirements of the regulation. The total value of transportation services performed using such trucks can be credited toward meeting a contract goal.

MANUFACTURERS AND MATERIAL SUPPLIERS

If the materials or supplies are obtained from a certified DBE manufacturer, 100 percent of the cost of the materials or supplies will be counted toward the DBE goal. A manufacturer is a firm that operates the or maintains a factory or establishment that produces, on the premises, materials required under the contract as described by the specifications.

If the materials or supplies are purchased from a certified DBE regular dealer, 60 percent of the cost of the materials or supplies will be counted toward the DBE goal. 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 described by the specification and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

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. 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 for in the above paragraph 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.

In order for a firm to qualify as a DBE supplier of metal and/or concrete pipe, the firm must also fabricate the pipe. Metal or concrete pipe is specialty pipe which is project specific and is inspected during the manufacturing process. This arrangement provides for no warehousing of metal or concrete pipe and essentially requires the manufacturer to be the supplier. Merely ordering pipe from the fabricator, and in turn selling it to contractors is not consistent with normal industry practice. Contractors normally purchase pipe directly from the manufacturer, thus

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eliminating the middleman. Supplying metal or concrete pipe is viewed as brokering and is considered inconsistent with DBE program requirements.

SUBSTITUTION/REPLACEMENT OF DBES

Substitution or replacement of a DBE will only be permitted or allowed after award and execution of the U.S. DOT assisted contract.

A prime contractor may not terminate for convenience a DBE listed in their contract (or an approved substitute DBE firm) and then perform the work of the terminated subcontract with its own forces or those of an affiliate, without ODOT's prior written consent.

When a DBE is terminated, or fails to complete the work of the contract for any reason, the prime contractor must make good faith efforts to find another DBE to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work (not necessarily the same work) under the contract as the DBE that was terminated, to the extent needed to meet the DBE goal established in the contract.

When the contractor obtains a substitute DBE, the contractor shall provide the Construction Division with copies of the substitute's subcontract, the Notification Change of DBE Participant (DBE Form 4), and supporting documentation.

If the contractor is unable to replace the DBE with another DBE, then the contractor must provide ODOT with evidence that they have made a good faith effort (Appendix B). The prime contractor must submit to the Construction Division a Request for Waiver of DBE Requirements (DBE Form 5) along with documentation to support they have made a good faith effort. ODOT may adjust the goal as appropriate.

If a contractor fails to comply with this section, appropriate administrative remedies as listed in the section titled Administrative Remedies may be taken.

PROMPT PAYMENTS

To ensure that all prime contractors' obligations under U.S. DOT contracts are met, the prime contractor shall pay all subcontractors for satisfactory performance of their contracts no later than fifteen days after receipt of each progressive payment from ODOT. The prime contractor must further make prompt return of retainage held to the subcontractor or DBE within fifteen days after the subcontractor's work is satisfactorily completed, whether the prime contractor's work is complete or not. The term "satisfactorily completed" is defined as when; 1) ODOT finds the work completed in accordance with the Plans and Specifications, 2) any required paperwork, including material certification, payrolls, etc., have been received and approved by ODOT

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and 3) the Department has determined the final quantities on the subcontractor's portion of the work. Failure to comply with the prompt payment and return of retainage provisions of the contract may result in sanctions under the contract, as listed in Administrative Remedies.

Any delay or postponement of payment among the parties may take place only for good cause, with ODOT's written approval. The explanation from the prime contractor must be made in writing to the Resident Engineer. ODOT will provide internal controls to expedite the determination and processing of the final quantities for the satisfactorily completed subcontracted portions of the contract in accordance with Special Provision 109-8(a-b)99.

Prime contractors must include in their subcontract agreements notifying subcontractors of their right to prompt payment and return of retainage under 49 CFR part 26.29.

Prime contractors must include in their subcontracts language providing that prime contractors will utilize the alternative dispute resolution program to resolve payment differences. ODOT will provide the parties with a list of approved mediators and the parties must agree on a mediator within five days. ODOT will provide an approved mediator at no charge for disputes between DBEs and prime contractors. If the parties cannot agree to use one of the mediators from the list provided by the Department, then the subcontractor and prime contractor will be responsible for the costs incurred for the services of another mediation service.

GOAL WAIVERS

In the case where a contractor cannot meet the DBE goal of a contract, they should request a waiver of that portion of the DBE goal which will not be met. The request will be subject to the following:

- * A request for waiver will be initiated by the prime contractor at the time he or she reasonably knows that despite good faith efforts the contract goal will not be achieved. The request will be in writing and will document all good faith efforts made to meet the goal.

- * The request for waiver will be submitted for review to the Resident Engineer and will be submitted on the Request for Waiver of DBE Requirements (DBE Form 5). The Resident Engineer will forward the request to the Construction Division. DBE goal waivers will be approved or denied by the Construction Division and Civil Rights Division - External Program. ODOT will make the decision on the waiver and inform the Division Office of FHWA on full oversight projects.

- * If at the completion of the project the contractor has failed to meet the DBE goal, does not have an approved waiver, and has not demonstrated good faith efforts to meet the goal, the contractor will be assessed liquidated

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damages for the difference between the contract goal and the actual DBE participation achieved. The Department shall deduct the liquidated damages from subsequent progressive estimates. In the event insufficient earnings remain for the deduction of liquidated damages, the Department may claim against the contractor's bond, suspend the contractor under performance suspension, withhold further proposals, or suspend prequalification.

* In those instances when the goal is not met due to a change in quantity which occurs through no fault of the contractor, but due to ODOT, a goal waiver will not be required for the contractor. Instead, a brief explanation from the Residency at the time the DBE Final Payment Form (DBE Form 3) is submitted, along with the statement of overruns and underruns, will suffice as documentation.

Administrative Remedies

The following administrative remedies may be invoked when the federal DBE contractual requirements are not met by a contractor, and if the contractor has failed to provide evidence of a sufficient good faith effort to meet said provisions:

- Suspension of processing progressive estimates
- Liquidated damages
- Refusal to issue proposals
- Suspension of work on the project
- Suspension of prequalification
- Debarment
- Removal of Certification

RECORD KEEPING REQUIREMENTS

The prime contractor will keep such records as are necessary to determine compliance with the DBE contract obligations. The records kept by the contractor will indicate:

1. The name(s) of DBEs or other subcontractors, the type of work being performed, and payment for work, services and procurement.
2. Documentation of correspondence, verbal contracts, telephone calls, etc., to obtain services of DBEs on the project.
3. The prime contractor shall maintain a copy of the DBE trucking firm's list of trucks to be used on that project. This shall be provided to the prime by the DBE prior to the DBE beginning the work of their hauling agreement. This list will be sent along with the actual hauling agreement to the Construction Division for approval, and the prime contractor will also furnish it to the Resident Engineer for monitoring activities.

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Upon request, the prime contractor shall submit all subcontracts, purchase orders, contracts, agreements, and financial transactions, including canceled checks, executed with DBEs with the reference to records referred to in this provision, in such form, manner, content prescribed by ODOT.

Once the project begins, prime contractors will be required to submit Monthly Payment Log Forms (DBE Forms 2A or 2B) to the Resident Engineer each month for the duration of the project. The DBE Form 2A, completed by non-DBE prime contractors, will record payments made to all DBE firms providing materials or services to the project, whether listed in the Contract to meet a project goal or not. The Form 2B, completed by DBE prime contractors, will record payment made to all non-DBE subcontractors. Listed on the forms should be all payments made, including final payment and return of retainage. These forms must be received by the Resident Engineer no later than the 15th of the following month.

For contracts with a specified project DBE goal, the contractor shall submit to the Resident Engineer a DBE Final Payment Report (DBE Form 3A), which replaces the Summary Form 1. The contractor should list all DBEs as in the contract and summarize total amounts paid to DBEs and the project goal amount for each DBE. In instances where the contract is performed as a joint venture and one of the members of the joint venture is a DBE, the joint venture should summarize the total amounts paid to the DBE joint venturer for work performed. If the contractual goal is not met, the goal waiver procedures set forth in Section VII, Contract Performance, Goal Waivers, will apply.

DISPUTE RESOLUTION PROGRAM

Any dispute or disagreement which may arise between a DBE and a prime contractor related to that DBE's participation in or exclusion from an ODOT project, or any adverse action of non-action taken by a contractor with regards to a DBE may be subject to the ODOT DBE Dispute Resolution Program. The contractor and the DBE shall participate in good faith to resolve the dispute or disagreement.

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SUPPLEMENT TO PROPOSAL
FOR PROPOSED
DISADVANTAGED BUSINESS ENTERPRISE

THIS FORM SHALL BE COMPLETED BY BIDDER AS PART OF THIS PROPOSAL

As provided in this Special Provision, "DISADVANTAGED BUSINESS ENTERPRISES PROGRAMS" the undersigned bidder will use the Department certified DBE service/suppliers/subcontractors listed below to meet the percentage goals of the total contract amount for this project:

CONSULTANTS, SUBCONTRACTORS, SERVICE, REGULAR DEALERS
(MATERIAL SUPPLIERS), & FABRICATORS

NAME	DESCRIPTION OF WORK	AGREEMENT AMOUNT (1)

NOTE: ONLY THOSE DBEs LISTED ON THE CERTIFIED LIST IN THEIR AREA(S)
OF EXPERTISE CAN BE USED TO FULFILL DBE GOAL REQUIREMENTS.

SUBTOTAL (1) _____

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REGULAR DEALERS (MATERIAL SUPPLIERS)

NAME	DESCRIPTION OF MATERIAL	60% OF AGREEMENT (2)

NOTE: BROKERAGE, PACKAGERS, AND PASS THROUGHES DO NOT QUALIFY AS DBE PARTICIPATION. MATERIAL SUPPLIERS AND OWNER/OPERATORS DO NOT QUALIFY AS SUBCONTRACTORS.

SUBTOTAL (2) _____

TOTAL (1+2) _____

% OF BID _____

COMPANY NAME _____

BY: _____

TITLE: _____

Subscribed and sworn before me this _____ day of _____ year _____.

Notary Public _____.

My commission expires _____.

SEAL.

DBE Participation and Monitoring

**OKLAHOMA DEPARTMENT OF TRANSPORTATION
NON-DBE PRIME CONTRACTOR
MONTHLY PAYMENT LOG TO
DISADVANTAGED BUSINESS ENTERPRISE FIRMS
(DBE FORM 2A)**

PROJECT NUMBER		RESIDENCY		DIVISION	
JOBPIECE NUMBER		CONTRACTOR			
COUNTY		MONTH/YEAR		REPORT NO	

NAME OF DBE FIRM (any DBE providing services or supplies on project)	DATE OF PAYMENT (To DBE)	AMOUNT PAID THIS MONTH (To DBE)	AMOUNT PAID TO DATE (To DBE)

<u>The Contractor certifies that the above amounts have been paid to those listed DBE's and that documentation of these payments are available for inspection upon request.</u>	Authorized Signature _____ Date _____ Type/Print Name _____ Title _____	Subscribed and sworn to before me this _____ day of _____, _____, Notary Public. My Commission Expires: _____
---	---	--

Must be received from Contractor & input by Residency prior to the end of the month following the month reported.	Computer Entry By _____ Date _____
---	------------------------------------

**OKLAHOMA DEPARTMENT OF TRANSPORTATION
DBE PRIME CONTRACTOR
MONTHLY PAYMENT LOG TO
NON-DBE SUBCONTRACTORS
(DBE FORM 2B)**

PROJECT NUMBER	RESIDENCY	DIVISION
JOBPIECE NUMBER	CONTRACTOR	
COUNTY	MONTH/YEAR	REPORT NO

NAME OF NON-DBE SUBCONTRACTOR (any approved non-DBE subcontractor)	DATE OF PAYMENT (To Sub)	AMOUNT PAID THIS MONTH (To Sub)	AMOUNT PAID TO DATE (To Sub)

The Contractor certifies that the above amounts have been paid to those listed approved non-DBE's subcontractors and that documentation of these payments are available for inspection upon request.	Authorized Signature _____ Date _____ Type/Print Name _____ Title _____	Subscribed and sworn to before me this _____ day of _____, _____, Notary Public. My Commission Expires: _____
Must be received from Contractor & input by Residency prior to the end of the month following the month reported.		Computer Entry By _____ Date _____

ODOT DBE Form 2B
August 1999

OKLAHOMA DEPARTMENT OF TRANSPORTATION
NON-DBE PRIME CONTRACTOR
DISADVANTAGED BUSINESS ENTERPRISE
FINAL PAYMENT REPORT
(DBE FORM 3A)

PROJECT NUMBER		RESIDENCY		DIVISION	
JOBPIECE NUMBER		CONTRACTOR			
COUNTY		CONTRACT AMOUNT			

R O W #	NAME OF DBE FIRM (any DBE providing services or supplies on project)	FINAL PAYMENT (Retainage Paid)		CONTRACT GOAL (Each DBE)		COMPLETED (Each DBE)	
		DATE	AMOUNT (in \$\$\$)	AMOUNT (in \$\$\$)	PERCENT	AMOUNT PAID (in \$\$\$)	PERCENT
1							
2							
3							
4							
5							
6							
7							
8							
9							
10							
			TOTALS				

The Contractor certifies that the above amounts have been paid to those listed DBE's and that documentation of these payments are available for inspection upon request.

Authorized Signature _____ Date _____
 Type/Print Name _____
 Title _____

Subscribed and sworn to before me this _____
 day of _____, Notary Public.
 My Commission Expires: _____

Oklahoma Department of Transportation



Civil Rights Division

200 N.E. 21st Street, Room 1-C5

Oklahoma City, OK 73105

Phone: (405) 521-6046

Fax: (405) 522-2136

**Notification Change of DBE Participant
DBE FORM 4**

Current Date: _____

Project No: _____

Job Piece Number: _____

County: _____

Division: _____

Prime Contractor: _____

CHANGE: FROM/TO (fill in both sides)

OR

ADD: TO (fill in this side only)

Name: _____

Address: _____

City: _____

Zip Code: _____

Phone No: _____

Name: _____

Address: _____

City: _____

Zip Code: _____

Phone No: _____

The DBE is a (Check One):

☐ Subcontractor ☐ Supplier (60%) ☐ Trucking Firm ☐ Manufacturer ☐ Professional

Change in service to be performed:

Change in DBE Participation Amount: _____

Explain Reason for Changing:

NOTE: Attach a copy of the letter by the original DBE stating reason for inability to perform work.

Contractor _____

Position _____

Assistant Division Manager, Civil Rights Division

Construction Engineer

Date

Date

☐ Approved ☐ Disapproved

☐ Approved ☐ Disapproved

**DISTRIBUTION: Title VI Coordinator, Civil Rights Division
Assistant Division Manager, Civil Rights Division
Construction Division**

Oklahoma Department of Transportation



Civil Rights Division

200 N.E. 21st Street, Room 1-C5

Oklahoma City, OK 73105

Phone: (405) 521-6046

Fax: (405) 522-2136

**REQUEST FOR WAIVER OF DBE
REQUIREMENTS
DBE FORM 5**

Current Date:

Project No:

Job Piece Number:

Division:

County:

Prime Contractor:

I hereby request that the DBE requirement on the above project(s) be waived for the following reasons: (Attach Evidence of GOOD FAITH EFFORTS)

Contractor

Position

Resident Engineer

Date

Assistant Division Manager, Civil Rights Division

Date

☐ Approved ☐ Disapproved

**DISTRIBUTION: Title VI Coordinator, Civil Rights Division
Assistant Division Manager, Civil Rights Division
Construction Division**

COMPLAINT PROCEDURE

PURPOSE

The purpose of the complaint process is to provide an aggrieved person an avenue to file a complaint regarding DBE and EEO External Contract Compliance Program violations.

DEFINITIONS

The following words and terms, when used in this procedure, shall have the following meaning, unless the context clearly indicates otherwise.

DBE Program – The federally mandated program for socially and economically disadvantaged individuals, as defined in 49 CFR Part 26.

EEO Contract Compliance – The federally mandated program for external equal employment opportunity on federally assisted projects as defined in 23 CFR Part 230.

Complainant – A party who makes the complaint.

Operating Administration – A modal administration of the U.S. Department of Transportation, including the Federal Highway Administration, the Federal Aviation Administration, and the Federal Transit Administration.

Respondent – One who responds to the allegations made by the complainant.

ODOT – The Oklahoma Department of Transportation.

PROGRAM COMPLAINTS

The Oklahoma Department of Transportation (ODOT) uses the following, detailed internal procedures for prompt processing and resolution of all Title VI complaints received directly by any of its divisions or field divisions having responsibilities under the Title VI and the related Nondiscrimination statutes. These procedures include but are not limited to:

1. Any person who believes that he or she, individually, as a member of any specific class, has been subjected to discrimination prohibited by Title VI of the Civil Rights Act of 1964, as amended, may file a complaint with the Title VI Coordinator with the Office of Civil Rights. A complaint may also be filed by a representative on behalf of such a person.

2. In order to have the complaint considered under this procedure, the complaint must be filed no later than 180 calendar days after:

- o The date of the alleged act of discrimination; or
- o Where there has been a continuing course of conduct, the date on which that conduct was discontinued

3. Complaints shall be filed using the department's Title VI Complaint Form (available at http://www.okladot.state.ok.us/civil-rights/title6/pdfs/title-vi_complaint_form.pdf or by contacting the Office of Civil Rights). Complaints shall set forth as fully as possible the facts and circumstances surrounding the claimed discrimination. In the event that a person makes a verbal complaint of discrimination to an officer or employee of the

recipient, the person shall be interviewed by the Title VI Coordinator. If necessary, the Title VI Coordinator will assist the person in reducing the complaint to writing and submit the written version of the complaint to the person for signature. The complaint shall then be handled in the usual manner.

Complaints should be directed to:
Oklahoma Department of Transportation
Office of Civil Rights
Attention: Title VI Coordinator
200 N.E. 21st Street, Room 1-C5
Oklahoma City, OK 73105-3204

4. Upon receipt of the signed complaint form, the Title VI Coordinator will log-in the complaint, determine the basis of the complaint, authority/jurisdiction, and who should conduct the investigation.

5. The Title VI Coordinator reviews and determines the appropriate action regarding every Title VI complaint. The department will not proceed with or continue a complaint investigation if:

- a. The complaint is, on its face, without merit;
- b. The same allegations and issues of the complaint have been addressed in a recently closed investigation or by previous federal court decisions; and
- c. The complainant's or injured party's refusal to cooperate (including refusal to give permission to disclose his or her identity) has made it impossible to investigate further.

6. Within ten (10) business days, the Title VI Coordinator will acknowledge receipt of the allegation, inform the complainant of action taken or proposed action to be taken to process the allegation(s), and the complainant is advised of other avenues of redress available, such as the Federal Highway Administration (FHWA), Federal Transit Administration (FTA), Department of Justice, and Department of Transportation. The notification letter contains:

- a. The basis of the complaint;
- b. A brief statement of the allegation(s) over which the department has jurisdiction;
- c. A brief statement of the department's jurisdiction over the recipient to investigate the complaint; and
- d. An indication of when the parties will be contacted.

7. Title VI Complaints dealing with *Federal Highway Administration (FHWA) funds*: The Title VI Coordinator will notify FHWA's Division Office within ten (10) calendar days of receipt of the allegation(s). Generally, the following information will be included in every notification to the Office of Civil Rights:

- a. Name, address, and phone number of the complainant.
- b. Email address if available.
- c. Basis of complaint (i.e., race, color, national origin, sex, age, disability/handicap).
- d. Date of the alleged discriminatory act(s).
- e. Date of complaint received by the recipient.
- f. A statement of the complaint.
- g. Other agencies (state, local or Federal) where the complaint
- h. An explanation of the actions the recipient has taken or proposed to resolve the issue(s) raised in the complaint.

Title VI Complaints dealing with *Federal Transit Administration (FTA) funds*:

The Title VI Coordinator will notify FHWA's Division Office within ten (10) calendar days of receipt of the allegation(s). Generally, the following information will be included in every notification to the Office of Civil Rights:

- a. Name, address, and phone number of the complainant.
- b. Email address if available.
- c. Basis of complaint (i.e., race, color, national origin, sex, age, disability/handicap).
- d. Date of the alleged discriminatory act(s).
- e. Date of complaint received by the recipient.
- f. A statement of the complaint.
- g. Other agencies (state, local or Federal) where the complaint
- h. An explanation of the actions the recipient has taken or proposed to resolve the issue(s) raised in the complaint

8. Depending on the funding, Title VI Complaints will be handled in the following manner:

- A. Title VI Complaints dealing with Federal Highway Administration (FHWA) funds: Within sixty (60) calendar days from the date the original complaint was received, the Title VI Coordinator will conduct and complete an investigation of the allegation(s) and based on the information obtained, will render a recommendation for action in a report of findings to FHWA's Division Office.
- B. Title VI Complaints dealing with Federal Transit Administration (FTA) funds: Within sixty (60) calendar days from the date the original complaint was received, the Title VI Coordinator will conduct and complete an investigation of the allegation(s) and based on the information obtained.

9. The Title VI Coordinator will conduct an in-depth, personal interview with the complainant(s).

Information gathered in this interview includes: identification of each complainant by race, color, sex, age, national origin, disability/handicap, or income status; name of the complainant; a complete statement concerning the nature of the complaint, including names, places, and incidents involved in the complaint; the date the complaint was filed; and any other pertinent information the investigation team feels is relevant to the complaint. The interviews are recorded either on audio tape or by taking notes. The Title VI Coordinator arranges for the complainant to read, make necessary changes to, and sign the interview transcripts or interview notes. Every effort will be made to obtain early resolution of complaints at the lowest possible level.

10. Depending on the funding, Title VI Complaints will be handled in the following manner:

- A. Title VI Complaints dealing with *Federal Highway Administration (FHWA) funds*: Within ninety (90) calendar days of receipt of the complaint, the Title VI Coordinator will forward the investigative report to the FHWA. Included with the report is a copy of the complaint, copies of all documentation pertaining to the complaint, the date the complaint was filed, the date the investigation was completed, the disposition and the date of the disposition, and any other pertinent information. If, for some reason, the investigation cannot be completed within this timeframe, a status report shall be submitted to FHWA and the report shall follow upon completion. The FHWA reviews and issues the official "Letter of Findings" to the complainant.

If the complaint cannot be resolved by the Department to the satisfaction of all parties concerned, the party not satisfied is advised of his or her right to appeal pursuant to Title 49, Code of Federal Regulations, Part 21. The

appeal must be filed, in writing no later than 180 calendar days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary to:

Federal Highway Administration
Office of Civil Rights
1200 New Jersey Avenue, SE
8th Floor E81-314
Washington, DC 20590

- B. For Title VI Complaints dealing with *Federal Transit Administration (FTA) funds*: Within ninety (90) calendar days of receipt of the complaint, the Title VI Coordinator will issue a "Letter of Findings" to the complainant. Included with the report is a copy of the complaint, copies of all documentation pertaining to the complaint, the date the complaint was filed, the date the investigation was completed, the disposition and the date of the disposition, and any other pertinent information. If, for some reason, the investigation cannot be completed within this timeframe, a status report shall be submitted to the complainant and the report shall follow upon completion.

If the complaint cannot be resolved by the Department to the satisfaction of all parties concerned, the party not satisfied is advised of his or her right to appeal pursuant to FTA Circular 4702.1B. The appeal must be filed, in writing no later than 180 calendar days after the date of the alleged discrimination, unless the time for filing is extended by the Secretary to:

Federal Transit Administration
East Building
Office of Civil Rights
1200 New Jersey Avenue, SE
Washington, DC 20590

11. A complaint may be filed with the Secretary; U.S. Department of Transportation, before, during, or after the complaint has been filed with the Oklahoma Department of Transportation.

COMPLAINT FORM

TITLE VI COMPLAINT FORM

The Oklahoma Department of Transportation is committed to ensuring that no person is excluded from participation in or denied the benefits of its services on the basis of race, color, or national origin, as provided by the Title VI of the Civil Rights Act of 1964, as amended. The Title VI complaints must be filed within 180 calendar days from the date of the alleged discrimination.



Date of Filing:	
Name:	
Address:	
City, State, Zip Code:	
Work Phone:	
Home Phone:	
E-mail Address:	

Oklahoma Department of Transportation

Civil Rights Division

200 N.E. 21st Street, Room 1-C5
Oklahoma City, Oklahoma 73105

Phone: (405) 521-2072

Fax: (405) 522-2136

<http://www.okdot.state.ok.us/>

Indicate on what ground(s) you believe you have been discriminated against (check all that apply):

- | | | | |
|-------------------------------|--------------------------------|--|-----------------------------------|
| <input type="checkbox"/> Race | <input type="checkbox"/> Color | <input type="checkbox"/> National Origin | <input type="checkbox"/> Religion |
| <input type="checkbox"/> Sex | <input type="checkbox"/> Age | <input type="checkbox"/> Disability | |

Indicate the person(s) who you believe discriminated against you:

Name(s):	
Work Location (if known):	
Work Phone:	
Date of alleged incident:	

If you have an attorney representing you concerning the matters raised in this complaint, please provide the following:

Name:	
Address:	
Work Phone:	
E-mail Address:	

Explain why you believe discrimination has occurred. If there are witnesses, please provide names, addresses and telephone numbers. Be sure to include how other persons were treated differently than you. Attach additional pages as necessary and any written material pertaining to your case.

What remedy are you requesting? Please be specific:

Have you filed or do you intend to file a charge or complaint concerning the matters raised in this complaint with any other agencies (Federal, State, or local):

☐ Yes

☐ No

If so, please provide the following information:

Agency:	
Address:	
Name of Investigator (if known):	
Phone Number:	
E-mail Address:	
Date Filed:	
Status of case:	

I confirm that I have read the above charge(s) and it is true to the best of my knowledge.

Print or typed name of complainant:

Signature

Date

Completed forms must be submitted to the Oklahoma Department of Transportation's Civil Rights Division.
If you require any assistance in filling out this form please contact the Title VI Coordinator at 405-521-2072.

Print Form

Prompt Payment Complaint Process

SPECIAL PROVISIONS FOR PAYMENT TO SUBCONTRACTORS

The Disadvantaged Business Enterprise (DBE) regulation, 49 CFR Part 26.29, requires the recipient to establish a contract clause to require prime contractors to pay all subcontractors for satisfactory performance of their subcontracts no later than 30 days from receipt of each payment the recipient makes to the prime contractor. When the DBE regulation changed in 1999 to require prompt payment, the U.S. DOT left it up to the recipients to determine the period for payment, as long as it did not exceed 30 days. At the time, ODOT chose to utilize the 30-day prompt payment period, which applies to all subcontractors, DBE, and non-DBE.

The Code of Federal Regulations require that Contractors pay subcontractors, suppliers, and vendors promptly for work performed or materials provided, and release retainage promptly after the subcontractor, supplier, or vendor completes the work or provides material certifications. The Department has established that, when criteria for payments are met, **15 calendar days** is a reasonable time to make payment or release retainage, and requires that payment be made within that time. The 15 calendar day period for subcontracted work or materials and services provided will commence on the date the Contractor receives payment from the Department for the work. If the Contractor holds retainage for subcontracted work or materials/services provided, the 15 day period shall commence on the date that the Resident Engineer determines that the subcontracted unit portion of the Contract has been completed in accordance with Subsection 105.17, "Project Completion and Acceptance," or the project is deemed complete by the Department. Services provided to a Contractor for support of construction operations or as deemed necessary by the Contractor for upkeep of machinery or facilities used directly or indirectly for construction operation shall be paid within 15 calendar days of the last services provided. If payment is not made for work, materials, or services, or if retainage is not released within the required 15 day period, the subcontractor will be entitled to make a formal written complaint to the Department detailing the amount and date due, and the work performed or material provided. The Department will then institute a formal investigation and, if warranted conduct a formal hearing. Upon finding that the Contractor failed to perform in accordance with the terms of the Contract requirements, the Department may impose sanctions as provided in Subsection 102.01, "Refusal of Proposals," Subsection 102.14, "Rejection of Proposal," or both.



PROMPT PAYMENT COMPLAINT

Oklahoma Department of Transportation
Construction Division
Civil Rights Division - External Programs

200 N.E. 21st St., Rm 1-C5
Oklahoma City OK 73105
(405) 521-6046
Fax (405) 522-2136

Name of Complainant

Name of Company

Address

City/State

Zip

Telephone #

Project Number

Prime Contractor

List pay items for which payment has not been made:

Pay Items	Quantity	\$ Amount	Dates Work Performed

Attach copies of documents to support complaint; Subcontract, Invoices, Notes, Time & Diaries, Payrolls, Correspondence, etc.
Explain action or conditions giving rise to this complaint, including contacts made with prime contractor and/or ODOT personnel:

Signature of Complainant

Date

Return complaint and supporting documents to address above. Incomplete complaints will not be processed.



**COMMERCIALLY USEFUL FUNCTION (CUF)
PROJECT SITE REVIEW
CUF FORM**

11/2009
Page 1 of 2

Per 49 CFR 26.55, "A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved... A DBE does not perform a CUF 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..." This form is for the purposes of reviewing DBEs for compliance with the CUF requirements for credit.

Residency personnel will perform CUF reviews on DBE subcontractors. Perform a review for each DBE on a federally-assisted construction project. The review should be conducted when the DBE first begins work. Monitor compliance through the course of the project.

Project No.: County: Prime Contractor: DBE Superintendent/Foreman: DBE Start Date:	Residency: ODOT Reviewer: Reviewer Title: Review Date: DBE Anticipated Completion Date:
--	---

DBE Name:

Provide a brief description of the DBE's scope of work.

<u>Supervision</u> Does the DBE have a superintendent/foreman on project? Does the superintendent/foreman work exclusively for the DBE? If not, who does he/she work for? Who does the superintendent/foreman report to?	Yes <input type="checkbox"/> <input type="checkbox"/>	No <input type="checkbox"/> <input type="checkbox"/>
---	---	--

<u>Employees</u> Does the DBE have employees on the job? Do they appear on DBE payrolls? If not, why? Do they appear on prime contractor's payroll? Who Assigns work to them?	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
---	--	--

<u>Performance</u> Has any other contractor performed any of the DBE's work? If yes, who and what work items?	<input type="checkbox"/>	<input type="checkbox"/>
--	--------------------------	--------------------------

<u>Equipment</u> Whose name appears on the equipment? Does DBE own or lease equipment? Does DBE use prime contractor's equipment?	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>	<input type="checkbox"/> <input type="checkbox"/> <input type="checkbox"/>
---	--	--

<u>CUF</u> Does it appear the DBE is performing a CUF? If DBE is not performing a CUF, contact the Regulatory Services Office at 405-521 6046	<input type="checkbox"/>	<input type="checkbox"/>
--	--------------------------	--------------------------

COMMENTS:

Reviewer Signature

R. E. Signature

CUF DETERMINANTS

11/2009
Page 2 of 2

If any Red Flag Conditions are identified, contact Regulatory Services

PERFORMING

- DBE must be responsible for performing its own work on the project
- The work of the subcontract must be performed by the DBE with its own workforce
- The DBE keeps a regular workforce and has its own employees
- The DBE is utilizing its own equipment
- Operation of the equipment must be subject to the full control of the DBE

RED FLAGS

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

RECORDS/DOCUMENTS

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

MATERIALS (For material credit)

- DBE is responsible for the delivery of the materials
- DBE is ordering the material and invoices indicate that DBE is the customer
- Material invoices indicate that DBE owner or Superintendent is the contact person

RED FLAGS

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

RECORDS/DOCUMENTS

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

SUPERVISING

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

RED FLAGS

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

RECORDS/DOCUMENTS

- Certified Payrolls
- Document communication with DBE owner or Superintendent

MEMO



To: Disadvantaged Business Enterprise firms

From: Civil Rights Division

Date: February 19, 2014

Re: DBE Confirmation

On federally-assisted ODOT construction projects with Disadvantaged Business Enterprise (DBE) goals, the bidder must make a good faith effort to meet the advertised DBE goal. The bidder must provide the names of DBE firms that will participate in the contract and include a description and dollar value of the work that each DBE will perform. In addition, the DBE firm identified by the bidder must provide written confirmation of their respective type of work and dollar value for the work representing their participation. This is identified as the DBE confirmation and the as-read low bidder is required to submit this to the Office Engineer Division **no later than the close of business on Wednesday following the bid opening.**

Previously, we have allowed the prime bidder to submit the DBE's quote as proof of their commitment to utilize DBE firms to meet the goal. We have found this is insufficient to meet the requirements of the DBE regulation. We require the bidders to use an ODOT form, **DBE Form-6 DBE Confirmation of Intent to Subcontract** to document their commitment to subcontract with a DBE firm and a written confirmation from the DBE firm to perform the work as stated in the bidder's proposal. This is only required if the project has a DBE goal and your firm was named to meet that goal. The form is available from the Office Engineer Order Desk, or can be obtained on the ODOT website by clicking on DBE Information/Reporting Forms/DBE Form-6.

If your firm is named by a bidder to meet a DBE project goal, and that bidder is the as-read low bidder, you will be required to sign this form and return it to the prime contractor. ODOT cannot award contracts to bidders who do not comply with this requirement, therefore, it is extremely important that if you are required to complete this form, you do so and promptly return to the prime contractor so they may attach it to your quote and return to the Office Engineer Division. Should you have any questions, please contact the Civil Rights Division at 405-521-6046.

Civil Rights Division

**Oklahoma Department of Transportation
DBE CONFIRMATION OF INTENT TO SUBCONTRACT
FEDERAL-AID PROJECTS**

Oklahoma Department of Transportation
Office Engineer Division
200 N.E. 21st. St. Rm. 1-A-5
Oklahoma City, Okla. 73105
Telephone: (405) 521-2625
Facsimile: (405) 522-0972

Project No.: _____

Call Order No.: _____

Bid Opening Date: _____

Contractor

Hereby intends to subcontract items of work to:

DBE Subcontractor

*Total amount of participation by DBE \$ _____
(DBE quote must be attached)

DBE Signature _____

Title _____

Date _____

Prime Contractor Signature _____

Title _____

Date _____

Signatures of Authorized representatives of the Prime Contractor and the DBE firm above represent the written commitment by the Prime Contractor to subcontract with the DBE firm and a written commitment by the DBE firm to subcontract for work as described in the attached quote. The following are required to be included in your packet as described in 49 CFR 26.53:

- The names and addresses of DBE firms that will participate in the contract;
- A full description of the contract work that each DBE will perform; and
- *The dollar amount of the participation of each DBE firm that is supported by the DBE bid. Each item description, quantity, price, amount, and total must be mathematically reflected and equal the total participation amount identified in your bid documents.

This form and the DBE's quote must be received no later than ODOT's close of business on the Wednesday following the bid opening. If not received, bid shall be considered nonresponsive and will be rejected by ODOT.

DBE-6
1/2014

Office Engineer _____
Civil Rights _____

OKLAHOMA

AllNations Bank

Gene Davis, CEO
P.O. Box 118
114 East Main
Calumet, OK 73014
Routing and Transit (ABA) Number: 103107004
Phone: (405) 893-2240
Fax: (405) 893-2249

Bank of Cherokee County

Contact: Gary D. Chapman, Chairman & CEO
P.O. Box 660
Hulbert, OK 74441
Routing and Transit (ABA) Number: 103107839
Phone: (918) 772-2572
Fax: (918) 772-2831

Bank of Commerce

Contact: James F. Carson, Chairman & CEO
P.O. Box 512
Stilwell, OK 74960
Routing and Transit (ABA) Number: 103112507
Phone: (918) 696-7745
Fax: (918) 696-6065

Bank of Grove

Contact: Lisa Dollarhide, SVP
201 East 18th Street
Grove, OK 74344
Routing and Transit (ABA) Number: 103189682
Phone: (918) 787-5900
Fax: (918) 787-9645

Farmers & Merchants Bank

Contact: Barry L. Anderson, President- Guthrie
116 S. Grand
Crescent, OK 73044
Routing and Transit (ABA) Number: 103104133
Phone: (405) 260-8800
Fax: (405) 260-1507

Oklahoma State Bank & Cashier

Contact: Heath Hartley, VP

P.O. Box 278

Vinita, OK 74301

Routing and Transit (ABA) Number: 103112620

Phone: (918) 256-5585

Fax: (918) 256-3817

Peoples Bank

Contact: Drew T. Carson, Chairman & CEO

P.O. Box 390

Westville, OK 74960

Routing and Transit (ABA) Number: 103104489

Phone: (918) 723-5453

Fax: (918) 723-3813

Secutiy State Bank of Wewoka

Contact: Keith Claybrook, SVP

P.O. Box 749

Wewoka, OK 74884

Routing and Transit (ABA) Number: 103109374

Phone: (405) 257-5411

Fax: (405) 257-5415

The First State Bank of Porter

Contact: Chris Taylor, Cashier

P.O. Box 250

Locust Grove, OK 74352

Routing and Transit (ABA) Number: 103105116

Phone: (918) 479-5001

Fax: (918) 479-8036



U.S. Department of
Transportation
Office of the Secretary
of Transportation

GENERAL COUNSEL

400 Seventh St., S.W.
Washington, D.C. 20590

February 7, 2003

Susan McClune
Regulatory Services
Oklahoma Department of Transportation
200 N.E. 21st Street
Oklahoma City, OK 73105-3204

RECEIVED
FEB 19 2003
REGULATORY SERVICES

Dear Ms. McClune:

The Department of Transportation (DOT) has reviewed the Unified Certification Program (UCP) you submitted to us on behalf of the Oklahoma Department of Transportation and other recipients of DOT financial assistance in Oklahoma. Your most recent submission has satisfactorily incorporated our earlier comments.

Consequently, I am pleased to approve the Oklahoma UCP, pursuant to the Department's disadvantaged business enterprise regulations (49 CFR §26.81(a)(4)). We look forward to working with you as you implement the UCP, which should significantly reduce burdens on small businesses seeking to participate in the DBE program in Oklahoma.

Sincerely yours,

Kirk K. Van Tine
General Counsel



Oklahoma Unified Certification Small Business Program

Overview and Application

The Oklahoma Department of Transportation (ODOT) is launching a Small Business Program (SBP) for the benefit and growth of those firms that may not qualify as a Disadvantaged Business Enterprise (DBE), but do qualify as a small business according to the Small Business Administration size standards. This certification is applicable to firms which bid or perform work on U.S. Department of Transportation (U.S. DOT) funded projects, and applies to all U.S. DOT recipients who are members of the Oklahoma Unified Certification Program (OUCP).

A small business is one that qualifies under the criteria and size standards in Title 13, Code of Federal Regulations, part 121 ([13 CFR 121](#)). Size standards have been established based on a firm's [North American Industry Classification System \(NAICS\)](#) code. Even if a firm meets the requirements of this section it is not eligible if it (including its affiliates) has had average annual gross receipts, as defined by SBA regulations, over the firm's previous three fiscal years, in excess of \$22.41 million. This is a cap set by the U.S. Secretary of Transportation and is adjusted based upon inflation.

A small business must be:

- An independent business, whose viability does not depend on its relationship with another firm or firms.
- Only firms organized for profit may be eligible for the Small Business Program.
- In order to participate, firms must be ready, willing, and able to perform work on U.S. DOT assisted contracts.
- Firms must be established businesses with sufficient assets and resources to perform the work of their contracts.

Each firm will be evaluated to ensure its' ability to perform a commercially useful function on U.S. DOT related contracts. Firms will be certified in specific work categories, as determined by their NAICS codes.

Certification will require submitting a brief application and supporting documentation to substantiate that the firm meets the eligibility criteria. If certified, a list of firms will be maintained in the ODOT Civil Rights Division, External Programs.

NAICS Codes

A North American Industry Classification System (NAICS) code is used by small businesses for administrative, contracting, and tax purposes. The code classifies the economic sector, industry, and country of your business, according to your economic activity.

A NAICS code consists of six digits. The first two digits indicate your economic sector, the third digit is your industry subsector, the fourth digit refers to your industry group, the fifth digit refers to your industry and the sixth digit specifies an industry that is specific to the U.S., Canada, or Mexico.

Why do I need it?

Determining Business Size

One of the first steps to participate in the OUCP SBP is to accurately determine if you can qualify as a small business under SBA size standards. The program only applies to firms which participate in U.S. DOT assisted contracts. You need to select the NAICS code(s) that best describe(s) your business and then determine if the business meets the size standards for the selected NAICS code(s). SBA size standards are stated either in **number of employees** over the past 12 months or **average annual gross receipts** over the past three years, depending on your firm's NAICS code(s). Even if your firm meets SBA criteria it still must be under the USDOT cap which is currently \$22.41 million.

The steps are simple to determine your size:

1. **Find your NAICS code.** Go to the NAICS section of the [Bureau of the Census](https://www.census.gov/naics/) website or click on "free code search" at www.naics.com which is the NAICS code website. Identify the NAICS code(s) that best describe(s) your business activities. Also see [Identifying Industry Codes](#) for more helpful resources.
2. **Determine your Industry's size standard** using the [Table of Small Business Size Standards](#). Match your NAICS code(s) with the appropriate size standard(s).

Application Process

Complete and submit the original signed, dated, notarized Small Business Program application along with supporting documentation. The documentation required substantiating small business size and eligibility is:

1. Three years of the firm's most current federal business income tax returns.
2. Gross receipts for three years of all affiliates or subsidiaries.



SMALL BUSINESS CERTIFICATION APPLICATION

Return completed application to the address below:

Oklahoma Department of Transportation
Civil Rights Division, External Programs
200 N.E. 21st Street, Room 1-C-5
Oklahoma City, Oklahoma 73105
(405) 521-6046 Fax: (405) 522-2136

The Oklahoma Department of Transportation's (ODOT) Small Business Program (SBP) applies to firms in Oklahoma which participate in U.S. DOT assisted contracts. This certification applies to all U.S. DOT recipients who are members of the OUCP. Businesses interested in pursuing this certification must meet the U.S. Small Business Administration (SBA) size standards and submit a completed application.

INSTRUCTIONS:

- All questions must be answered and all information requested must be submitted.
- Do not leave any space blank; enter N/A for not applicable.
- If your application is not legible, complete, signed, dated, notarized and accompanied by all required documentation, it will not be processed and will be returned.
- Please submit the original signed, dated, notarized document. Duplicated forms will not be accepted.
- For assistance, call the above number.

1. NAME AND ADDRESS (Company Name – Mailing Address – Street Address (if different) – City – State – Zip code): Email Address _____ Telephone: (____) _____ Fax: (____) _____			2. PRIMARY OWNER (X appropriate box): CITIZENSHIP: <input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Lawfully Admitted Permanent Resident <input type="checkbox"/> Other (explain): _____ (OPTIONAL: For Statistical Purposes Only) <table border="0"><tr><td><input type="checkbox"/> African-American</td><td><input type="checkbox"/> Alaskan Native</td><td>GENDER</td></tr><tr><td><input type="checkbox"/> Hispanic</td><td><input type="checkbox"/> Asian American</td><td><input type="checkbox"/> Male</td></tr><tr><td><input type="checkbox"/> Native American</td><td><input type="checkbox"/> Asian Pacific</td><td><input type="checkbox"/> Female</td></tr><tr><td colspan="3"><input type="checkbox"/> Non-Designated Group</td></tr></table>			<input type="checkbox"/> African-American	<input type="checkbox"/> Alaskan Native	GENDER	<input type="checkbox"/> Hispanic	<input type="checkbox"/> Asian American	<input type="checkbox"/> Male	<input type="checkbox"/> Native American	<input type="checkbox"/> Asian Pacific	<input type="checkbox"/> Female	<input type="checkbox"/> Non-Designated Group								
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<input type="checkbox"/> Hispanic	<input type="checkbox"/> Asian American	<input type="checkbox"/> Male																					
<input type="checkbox"/> Native American	<input type="checkbox"/> Asian Pacific	<input type="checkbox"/> Female																					
<input type="checkbox"/> Non-Designated Group																							
3. PRIMARY OWNER (Name – Title – Telephone – Fax):			4. BUSINESS STRUCTURE: Date Established _____ <table border="0"><tr><td><input type="checkbox"/> Sole Proprietorship</td><td><input type="checkbox"/> Corporation</td></tr><tr><td><input type="checkbox"/> Limited Liability Partnership</td><td><input type="checkbox"/> Partnership</td></tr><tr><td colspan="2"><input type="checkbox"/> Limited Liability Corporation</td></tr></table>			<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Corporation	<input type="checkbox"/> Limited Liability Partnership	<input type="checkbox"/> Partnership	<input type="checkbox"/> Limited Liability Corporation													
<input type="checkbox"/> Sole Proprietorship	<input type="checkbox"/> Corporation																						
<input type="checkbox"/> Limited Liability Partnership	<input type="checkbox"/> Partnership																						
<input type="checkbox"/> Limited Liability Corporation																							
5. OWNERSHIP (Provide information for <u>all</u> owners). For Additional space, attach a continuation sheet in the format below: <table border="0"><thead><tr><th>Name (First, MI, Last)</th><th>Title</th><th>% of Ownership</th></tr></thead><tbody><tr><td>_____</td><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td><td>_____</td></tr><tr><td>_____</td><td>_____</td><td>_____</td></tr></tbody></table>						Name (First, MI, Last)	Title	% of Ownership	_____	_____	_____	_____	_____	_____	_____	_____	_____						
Name (First, MI, Last)	Title	% of Ownership																					
_____	_____	_____																					
_____	_____	_____																					
_____	_____	_____																					
6. GROSS RECEIPTS AND EMPLOYMENT LEVELS: Beginning with the most recent year in which the business filed a federal income tax return with the Internal Revenue Service (IRS) and going back three previous years, provide the <u>gross receipts</u> figures as they were reported on the federal income tax returns. Also, provide the total number of employees that were reported at least once on the business federal and state employer's quarterly reports for each of the respective tax filing reporting periods. Attach copies of three years of the firm's most current federal income tax returns. <table border="0"><thead><tr><th>GROSS RECEIPTS</th><th># EMPLOYEES</th><th>TAX FILING YEAR</th><th>GROSS RECEIPTS</th><th># EMPLOYEES</th><th>TAX FILING YEAR</th></tr></thead><tbody><tr><td>(1) _____</td><td>_____</td><td>_____</td><td>(3) _____</td><td>_____</td><td>_____</td></tr><tr><td>(2) _____</td><td>_____</td><td>_____</td><td>(4) _____</td><td>_____</td><td>_____</td></tr></tbody></table> <p>Business size will be determined by the Business Activity and Service listed on your firm's tax return, Schedule C or Schedule K.</p>						GROSS RECEIPTS	# EMPLOYEES	TAX FILING YEAR	GROSS RECEIPTS	# EMPLOYEES	TAX FILING YEAR	(1) _____	_____	_____	(3) _____	_____	_____	(2) _____	_____	_____	(4) _____	_____	_____
GROSS RECEIPTS	# EMPLOYEES	TAX FILING YEAR	GROSS RECEIPTS	# EMPLOYEES	TAX FILING YEAR																		
(1) _____	_____	_____	(3) _____	_____	_____																		
(2) _____	_____	_____	(4) _____	_____	_____																		
7. DOES YOUR COMPANY OWN MAJOR EQUIPMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO DOES YOUR COMPANY HAVE LEASED EQUIPMENT? <input type="checkbox"/> YES <input type="checkbox"/> NO List owned/leased equipment on separate sheet, by type and Quantity.			8. PAYEE IDENTIFICATION NUMBER: List the Federal Identification Number assigned to the business for tax filing purposes. 9. List Any Affiliates or Subsidiaries:																				

10. LIST FIRM'S NAICS CODE(S):					
11. LIST THE THREE (3) LARGEST CONTRACTS THAT YOUR FIRM HAS RECEIVED:					
<u>CONTRACT</u>	<u>AMOUNT</u>	<u>CONTACT PERSON</u>	<u>PHONE NUMBER</u>	<u>TYPE OF WORK</u>	<u>DATE</u>

12. NATURE OF BUSINESS: Check the type of work your business performs. Should your firm's type not be listed below, indicate service provided and percent of dollar value.

- ☐ **Asphalt** - includes seal coats and surface treatments, limestone rock asphalt, cold- mix asphaltic concrete pavement, hot mix asphaltic concrete pavement, milling, etc.
- ☐ **Concrete Paving and Incidentals** - includes jointed concrete pavement and continuously reinforced concrete pavement.
- ☐ **Earthwork, Base and Subbase** - includes preparing ROW, clearing, removing old concrete, roadway and channel excavation, embankments, subbase courses, base courses, etc.
- ☐ **Fencing** - includes wire, chain link and metal beam guard fence, metal bridge railing, etc.
- ☐ **Hauling** - includes hauling of base material, gravel, sand, hot mix, etc.
- ☐ **Illumination** - includes placement of conduit and wire, poles, roadway and bridge lights, airfield lighting, etc.
- ☐ **Landscaping** - includes roadside planting, erosion control, sodding, seeding, etc., along roadway or airfield pavements.
- ☐ **Major Structures** - includes structural excavation, drill shafts, piling, concrete for columns, bents, abutments, slabs, structural steel, rebar, etc.
- ☐ **Material Suppliers** - suppliers of construction materials kept in inventory for public sale (60% credit). Manufacturers and suppliers (100% credit).
- ☐ **Minor Structures and Miscellaneous Concrete** - includes CGM and RC pipe, inlets, manholes, sewers, box culverts, sidewalks, driveways, riprap, curb and gutter, concrete bridge railing, concrete median barrier, etc.
- ☐ **Painting** - includes painting of structural steel and concrete structures.
- ☐ **Professional Services** - includes engineers, architects, surveyors, accountants, planners, inspection services, research, translation, etc.
- ☐ **Rest Areas** - includes steel, masonry or wood fabrication and erection, electrical wiring, plumbing, etc.
- ☐ **Traffic Control Devices** - includes traffic signals, signs, barricades, pavement markers, buttons, edge lines, striping, for roadway or airfield, etc.
- ☐ **Underground and Utility Work** - includes PVC pipe, underground conduit, utility telephone lines, water lines, etc.
- ☐ **Transit or Other** specify: _____

AFFIDAVIT OF ELIGIBILITY
This form must be signed and notarized for each owner

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

A material or false statement or omission made in connection with this application is sufficient cause for denial of certification, revocation of a prior approval, initiation of suspension or debarment proceedings, and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable Federal and State law.

 Printed Name of Majority Small Business Owner(s)

 Signature of Majority Small Business Owner(s)

 Printed Name of Majority Small Business Owner(s)

 Signature of Majority Small Business Owner(s)

Subscribed and sworn to me the undersigned notary public on this _____ day of _____, _____
 at _____
 (city and state)

(seal)

 My Commission Expires

 Notary Public

 My Commission Number