

**OZARK REGIONAL TRANSIT**  
in association with  
ARKANSAS DEPARTMENT OF TRANSPORTATION, PUBLIC TRANSIT DIVISION

**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

PURSUANT TO

49 CODE OF FEDERAL REGULATIONS, PART 26

October 1, 2019

**Nondiscrimination Statement**

Ozark Regional Transit (ORT) complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination Programs and activities receiving federal financial assistance. Therefore, ORT does not discriminate on the basis of race, sex, color, age, national origin, religion or disability, in admission or access to and treatment in ORT's Programs and activities, as well as ORT's hiring or employment practices. Complaints of alleged discrimination and inquiries regarding ORT's nondiscrimination policies may be directed to: Joel Gardner, Executive Director, 2423 E, Robinson Avenue, Springdale, Arkansas, 72764, or; [jgardner@ozark.org](mailto:jgardner@ozark.org)

This notice is available from the ADA/504/Title VI Coordinator in large print, audiotape or as an electronic audio file.

**OZARK REGIONAL TRANSIT  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

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**OZARK REGIONAL TRANSIT  
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**Chapter I - General**

Section 1 - Objectives

The purpose of this manual is to set forth the objectives and procedures for implementing a Disadvantaged Business Enterprise (DBE) Program for Ozark Regional Transit (ORT). This Program has been developed in conjunction with, and with permission from the Arkansas Department of Transportation, Public Transit Division. The intent of the DBE Program, hereafter referred to as the “PROGRAM” is to comply with Federal laws, regulations, and guidance, and to provide reasonable opportunities for DBEs to compete for and perform on contracts financed in whole or part with federal financial assistance, in an effort to achieve the level of DBE participation that would be achieved absent discrimination. The authority for this Program is Title 49 United States Code, as implemented by 49 Code of Federal Regulations, Part 26 (49 CFR 26).

- a. ORT seeks to achieve the following:
  - a. To ensure nondiscrimination in the award and administration of United States Department of Transportation (USDOT) assisted contracts in ORT’s, transit and transit related Programs;
    - 1. To create a level playing field on which DBEs can compete fairly for contracts;
    - 2. To ensure that ORT’s DBE Program is narrowly tailored in accordance with applicable law;
    - 3. To ensure that only firms that fully meet the eligibility standards are permitted to participate as DBEs;
    - 4. To help remove barriers to the participation of DBE firms in USDOT contracts administered by ORT;
    - 5. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities by ORT;
    - 6. To assist in the development of firms that can compete successfully in the marketplace outside the DBE Program; and
    - 7. To provide appropriate flexibility in ORT establishing and providing opportunities for DBEs.

*Ref 49 CFR Part 26.1*

## Section 2 - Authority and Scope

As a recipient of Federal funds, ORT is required to administer and participate in the USDOT DBE Program in compliance with all laws, regulations, Executive Orders, and guidance.

- a. ORT is a recipient of certain types of Federal-aid funding including:
  1. Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405; Fixing America's Surface Transportation (FAST) Act funds authorized by 1109; 23 U.S.C. 133, Pub. L. 114-94.
  11. Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405; Fixing America's Surface Transportation (FAST) Act funds authorized by 1109; 23 U.S.C. 133, Pub. L. 114-94.

*Ref 49 CFR Part 26.3*

## Section 3 - Uniform Report of DBE Awards or Commitments and Payments

This report is prepared by ORT and is submitted to Federal Transit Administration (FTA), Region 6. This report includes the awards/commitments made during the reporting period, broken down by ethnicity, gender and includes actual payments for ongoing contracts and contracts completed. This report is completed twice per year, and is due June 1 and December 1.

*Ref 49 CFR Part 26.11(a)*

## Section 4 - Bidders List

ORT will create and maintain a bidders list.

- a. The purpose of this list is to provide ORT as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on ORT's Federally-assisted contracts for use in helping ORT set overall goals.

- b. Each year, ORT will update the bidders list by obtaining information on all DBE and non-DBE firms that bid or quote on FTA/DOT-assisted contracts made available by ORT. The purpose of this requirement is to allow use of the bidders list in calculating overall goals. The following information will be collected:
  - 1. Firm name;
  - 2. Firm address;
  - 3. Firm's status as a DBE or non-DBE;
  - 4. Age of the firm; and
  - 5. The annual gross receipts of the firm. ORT will obtain the information by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) .Rather than requesting an exact figure from the firm.
- c. Information on firms submitting proposals for projects will be obtained from the proposal holders list and prequalified contractors list.

*Ref' 49 CFR Part 26.11(c)*

#### **Section 5 Recordkeeping and Reports**

- a. ORT will maintain records documenting the firm's compliance. At a minimum, ORT will keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews for the length of time they are certified. Other certification or compliance related records, and files from decertified firms will be retained for a minimum of three years.
- b. ORT will submit to the FTA Region 6, Office of Civil Rights on or before January 1 of each year the percentage and location of DBE firms in the UCP Directory controlled by the following:
  - 1. Women;
  - 2. Socially and economically disadvantaged individuals (other than women); and
  - 3. Individuals who are women and are otherwise socially and economically disadvantaged individuals.

*Ref' 49 CFR Part 26.JJ(d) & (e)*

**ARKANSAS DEPARTMENT OF TRANSPORTATION  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

**Chapter II - Administrative Requirements**

Section 1 - Program Development and Updates

- a. As ORT receives funds from at least one of the following operating administrations and lets FTA-assisted contracts, ORT must have a DBE Program meeting the requirements of 49 CFR Part 26:
  - FHWA funds authorized by a statute to which 49 CFR Part 26 applies;
  - FTA funds for planning, capital and/or operating assistance, and who will award prime contracts (excluding transit vehicle purchases) exceeding \$250,000 in a federal fiscal year;
- b. ORT is eligible to receive USDOT financial assistance because USDOT/FTA has approved the PROGRAM. The approval counts for all DOT-assisted Programs (except that goals are reviewed by the particular operating administration that provides funding for DOT- assisted contracts). ORT is in compliance with 49 CFR Part 26. ORT will continue to carry out its DBE Program until all funds from USDOT/FTA financial assistance have been expended. ORT will submit significant changes in the Program to the operating administration for approval.
- c. Sub-recipients must comply with ORT's plan and may not have an independent plan.

*Ref 49 CFR Part 26.21*

Section 2 - DBE Liaison Officer

- a. DBE Liaison Officer
  - The Controller for ORT, has been designated as the DBE Liaison Officer (DBELO) for ORT and reports directly to the Executive Director concerning DBE matters. The DBELO may be contacted at 479-361-8264 or 2423 E. Robinson Avenue, Springdale, Arkansas 72764.
  - The DBELO, by order of the Executive Director, has overall responsibility for development, direction, and day-to-day operations of the PROGRAM. This position oversees DBE supportive service activities and the dissemination of information to ensure that small, socially and economically disadvantaged businesses and women business enterprises are afforded an equal opportunity to bid on all DOT/FTA-assisted ORT contracts and participate in other contracting activities. The DBELO also has full responsibility for implementation of the DBE policy, monitoring of resulting Programs and procedures, and compliance with established goals.

- The DBELO is assisted in carrying out the DBE Program responsibilities by the Executive Director. Additional support is provided by various other ORT personnel as needed. Any information relating to DBE functions and activities is brought to the attention of the DBELO, who will review the information and initiate appropriate action through the responsible ORT personnel.

b. EEO/DBE Section

The DBELO is responsible for oversight of Program activities for ORT. The DBELO is responsible for many functions of the Program, including maintenance of certification files, performance of comprehensive compliance and on-site certification reviews, coordination of Program Certification Committee and Program Hearing Committee activities, maintenance of the DBE Directory, administration of the supportive services Program, tracking DBE participation, and coordinating with the Executive Director in setting ORT's overall goal. Assisting in these functions are the Equal Employment Opportunity (EEO) Coordinator, and Chief Financial Officer.

c. Certification Committee

1. The Certification Committee is an established panel whose function is to review information furnished by applicants for DBE status and the On-Site Review report (furnished by the DBE Program Specialist or the applicant's home state DOT) to determine if the business meets eligibility criteria for participation in the DBE Program. The Committee is composed of five members. Three voting members are ORT employees appointed by the Executive Director, one member from the ORT Board of Directors, and one member from the Northwest Arkansas Regional Planning Commission. The Committee meets as necessary. ORT representatives are from the Leadership Staff.
11. The Committee also reviews the DBE's annual affidavit to determine if it meets the criteria to remain eligible for the Program. If the Committee determines the firm does not meet the eligible standards or if the firm fails to submit its annual affidavit, the Committee will submit to the DBE an intent to decertify.

d. Hearing Committee

1. The Hearing Committee is an established panel whose function is to review DBE information furnished by the Certification Committee or the DBE firm to determine if the firm should remain eligible for the Program. The Hearing Committee consists of three representatives from the ORT Leadership Staff.

e. Others with DBE Program Responsibilities

- The Chief Financial Officer is responsible for reviewing each consultant contract for DBE sub-contracting potential and for maintaining records on total participation.



- The Controller is responsible for monitoring and reporting requirements relative to DBE utilization for Federal Transit Administration projects.
- Administrators, supervisors and other employees are responsible for effective implementation of the DBE policy within their respective jurisdictions.
- The DBE Supportive Services Program (DBE/SSP) is outsourced. The purpose of the DBE/SSP is to seek, enhance and increase minority- and female-owned firms for participation in the transit construction industry in NW Arkansas. This is done by identifying, assisting and promoting DBEs capable of performing work on federal-aid construction projects as contractors, subcontractors and suppliers.
- The DBE Advisory Committee discusses the experiences encountered by DBEs in complying with the DBE Special Provisions of the contract; makes recommendations designed to strengthen the DBE Program; reviews the proposed DBE goal and methodology and provides their comments prior to the goals being publicly announced; and investigates ways to improve opportunities for participation by DBEs. The Committee consists of personnel from ORT.
- The DBE Good Faith Effort Committee assesses a contractor's documentation of good faith efforts to achieve DBE participation goals when the information is submitted to satisfy contract bid requirements. The Committee consists of the DBELO, Executive Director, EEO Coordinator and Operations Manager.

*Ref 49 CFR Part 26.25*

### Section 3 - DBE Financial Institutions

It is the policy of ORT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions and to encourage prime contractors on USDOT/FTA assisted contracts to make use of these institutions. ORT will thoroughly investigate the full extent of services offered by banks owned and controlled by DBEs in the community. Based on this search there are no DBE owned banks in the State of Arkansas. ORT will investigate any new banks established in the area in the future that may be owned by DBEs and use their services when feasible.

- a. Use by the State  
ORT identifies any banks which are owned and controlled by socially and economically disadvantaged individuals, ascertains the services offered, and utilizes them to the greatest feasible extent.
- b. Use by the Contractors  
ORT will encourage bidders and contractors to consider the services offered by banks in their communities which are owned and controlled by disadvantaged individuals, and to utilize such services whenever feasible and beneficial. Banks owned and controlled by disadvantaged individuals will be listed in the DBE Directory.

c. Credit Toward Goals

At the present time, there is no provision which allows utilization of banks owned and controlled by disadvantaged individuals to be credited toward goal requirements of 49 CFR 26.

*Ref 49 CFR Part 26.27*

**Section 4 Prompt Payment and Retainage**

- a. The contractor shall pay all subcontractors their respective subcontract amount within 10 calendar days after the contractor receives payment from ORT. The payment amount shall be according to the terms of the subcontract, except that the contractor shall not require or withhold a retainage in excess of 10 percent (10%) of the amount due to the subcontractor. Amounts withheld as retainage from subcontractors must be returned within thirty days after the subcontractor's work is satisfactorily completed, whether the contractor's work is complete or not. The term "satisfactorily completed" for the purpose of this prompt return of retainage provision is defined as when: 1) the Engineer finds the subcontractor's work completed in accordance with the plans and specifications; 2) any required paperwork, including material certifications, payrolls, etc., has been received and approved by the Engineer; 3) the subcontractor does not have past due balances with suppliers for work associated with this project; and 4) the Engineer has determined the final quantities for the subcontractor's portion of the work. Delay or postponement of payment to a subcontractor may only be affected after the contractor has established good cause and received written approval from the Engineer. If the contractor fails to pay the subcontractors within the required periods, all or any portion of subsequent payments due the contractor may be withheld by the Engineer. Internal controls to expedite the determination and processing of the final quantities for the satisfactorily completed portions of the contract will be provided.
- b. Contractors must include in their subcontract agreements notice to subcontractors of their right to prompt payment and return of retainage, and provisions that require the subcontractor to pay second tier subcontractors as provided above, with the same restrictions on withholding.
- c. Failure to comply with the prompt payment provision of the contract may result in sanctions under the contract, including: refusal to issue proposals, liquidated damages, suspension of work on the project, holding of progress estimates, suspension of pre-qualification.
- d. Any delay or postponement of payment among the parties may take place only for good cause, with ORT's written approval. The explanation from the contractor must be made in writing to the Engineer.

*Ref 49 CFR Part 26.29*

## Section 5 - DBE Directory

ORT makes available to interested persons a directory identifying all firms eligible to participate as DBEs in ORT's DBE Program and includes the firm's name, address, telephone number and the type(s) of work that the firm is certified to perform as a DBE. This list is managed through the Arkansas Department of Transportation and is held on their website; [www.arkansashighways.com](http://www.arkansashighways.com). A connecting link to the directory is available online at [www.ozark.org](http://www.ozark.org).

*Ref 49 CFR Part 26.31*

## Section 6 - Overconcentration

- a. If the Program determines that certified DBE firms are over-concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in that type of work, it will devise appropriate measures to address the over-concentration and submit them to the ORT Administration for approval.
- b. Measures may include, but are not limited to, the use of incentives, technical assistance, business development Programs, mentor-protégé Programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which ORT has determined that non-DBEs are unduly burdened. ORT may also consider varying its use of contract goals, to the extent consistent with 49 CFR 26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.
- c. If ORT determines that there is over-concentration, measures as stated immediately above will not be used until such are approved by the ORT Administration. If such approval is obtained, the measures will become part of ORT's DBE Program.

*Ref 49 CFR Part 26.33*

## Section 7 - Monitoring and Enforcement

- a. Each contract ORT signs with a contractor (and each subcontract the contractor signs with a subcontractor) will include the following assurance:
  - It is the policy of ORT to ensure nondiscrimination in the award and administration of Department contracts and to create a level playing field on which DBEs can compete fairly. Consequently, the following applies to the contract, the DBEs listed in the contractor's DBE Participation submittal, the DBEs that are later approved as substitutes for those listed to satisfy the contract goal, and DBEs performing on a contract, but which are not used to fulfill a portion of a DBE goal.
  - The contractor, sub-recipient, or subcontractor shall not discriminate on the basis of race, color, national origin, disability, age, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR 26 in the award and administration of federally-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract,

which may result in the termination of this contract or such other remedy as ORT deems appropriate.

b. Additional Statement Required in all Department of Transportation (DOT) Financial Agreements

- In addition to the preceding statements relative to policy and DBE obligation, all financial agreements, grant approvals, project approvals, etc., between the DOT and ORT shall contain the following statement: "ORT complies with all civil rights provisions of federal statutes and related authorities that prohibit discrimination Programs and activities receiving federal financial assistance and therefore does not discriminate on the basis of race, color, national origin, disability, age, or sex in the award and performance of any FTA/DOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR 26. ORT shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and administration of FTA/DOT-assisted contracts. The Program, as required by 49 CFR 26 and approved by FTA/DOT, is incorporated by reference in this agreement.
- Implementation of this Program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to ORT of its failure to carry out its approved Program, FTA/DOT 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.)."

c. Department-required Contract Provisions

- All proposals and contracts in which DBE participation is prescribed as a condition to award of contract will contain a Special Provision to prescribe the actual percentage goal to be awarded DBEs. This Special Provision sets forth the percentage goal established for the contract and also includes a requirement for the contractor to complete a Certificate of Payments to DBEs form and submit to the Resident Engineer within 35 calendar days following the end of each estimate period. A Certificate of Final Payments to DBEs must be completed at the completion of the project to track amounts paid to each DBE.
- The proposal/contract will contain the DBE Participation form. By signing the proposal and completing the DBE Participation form, the bidder gives written commitment to meet, exceed, or demonstrate good-faith efforts to meet or exceed goals and to comply with all other requirements of the contract. The DBE firm(s) named by the contractor to fulfill the goal must certify on the form that the firm will perform as shown.
- The proposal/contract for all federal-aid contracts will contain a bidders list. The bidder is requested to complete the bidders list by listing every subcontractor, material supplier, or trucking firm that bid or provided quotes on any item on the project, regardless of whether the quotes were used in preparing the bidder's proposal or not. Information to be shown includes the firm's name, address, and whether the firm is a DBE or non-DBE. The data collected from each contractor along with information on each contractor

submitting a proposal for a project, will be utilized in compiling a master bidders list for ORT, as required by 49 CFR 26. The information must be provided before the Contractor will be issued proposals for future lettings.

d. Subcontracting and Approval to Sublet

- In addition to the bidder/contractor's commitment made prior to award of a contract, the contractor is required to submit to ORT any portion(s) of the contract the contractor will sublet, identifying the specific portion(s) or item(s) to be sublet, the agreed subcontract price, and the name of the proposed subcontractor.
- ORT reviews each subletting request to ensure that the proposed subcontract is in accordance with ORT's standards and in compliance with contract provisions. Where the particular contract contains specific goals for DBE participation, the sublet request will be reviewed for evidence of fulfillment of the contractor's DBE participation commitment on which the contract award was based.
- In reviewing a sublet request for fulfillment of DBE participation, ORT will note and verify, as a minimum, the following:
  1. Review the request to subcontract and determine if the contractor has committed the items to be subcontracted to DBE participation in the contract.
  2. If the items have been committed to DBE participation in the contract, the contractor must honor this commitment or document that the DBE designated in the contract for the item(s) is unable or unwilling to perform. Adequate documentation is a letter from the DBE designated to perform the work stating the reason the DBE cannot perform. If unable to obtain such a letter from the DBE, the contractor will be required to fully explain, in writing, the reason the DBE is deemed unable to perform, efforts made by the contractor to get the DBE to perform, and other relevant facts.
- When a DBE is unable or unwilling to fulfill the subcontract, the contractor will make good faith efforts to find another DBE subcontractor to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal established for the contract. The substitute DBE or any other person will not be permitted to commence work until satisfactory evidence of the original DBE's inability to perform and evidence of good faith effort to replace with another DBE, as appropriate, is submitted to and approved by ORT. The contractor will not perform the work with its own workforce in lieu of subcontracting without approval of ORT. The 49 CFR 26, Appendix A, describes the scope and nature of "good faith efforts" as including, but not limited to, the following:
  3. Soliciting through all reasonable and available means (e.g., attendance at a pre-bid meeting, 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.

4. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that 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 contractor might otherwise prefer to perform these work items with its own forces.
5. 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.
6. Negotiating in good faith with interested DBEs.
  - a. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the name, address, and telephone number of DBEs that were contacted; 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.
  - b. A bidder using good business judgment will consider a number of factors in negotiating with subcontractors, including DBE subcontractors, and will take a firm's price and capabilities as well as contract goals into consideration. However, the fact that there may be some additional costs involved in finding and using DBEs is not in itself sufficient reason for a bidder's failure to meet the contract DBE goal, as long as such costs are reasonable. Also, the ability or desire of a 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. Contractors are not, however, required to accept higher quotes from DBEs if the price difference is excessive or unreasonable.
7. Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations or associations, and political or social affiliations (for example, union vs. non-union employee status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal.
8. Making efforts to assist interested DBEs in obtaining bonding, lines of credit, or insurance required by ORT or contractor.
9. Making efforts to assist interested DBEs in obtaining necessary equipment, supplies, materials, or related assistance or services.
10. 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.

11. In determining whether a bidder has made good faith efforts, ORT may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, there is the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, this may be viewed, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts.

- In making determinations of good faith efforts, ORT will consider the quality, quantity, and intensity of the different kinds of efforts that the bidder made. The efforts employed should be those that one could reasonably expect a bidder to take if the bidder was actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements.
- Should the contract not have DBE goals or the items to be sublet be not committed to DBE participation, the contractor's sublet request will be reviewed by the ORT for compliance with other ORT requirements.

e. Sub-recipients - Contract Award and Administration of Projects Under ORT Jurisdiction

- Sub-recipients, most generally cities and counties, which serve as the contracting agency for projects funded by the Surface Transportation Block Grant Program (STBGP), its set-aside Programs such as the STBGP off-system Bridge Program, Transportation Alternatives Program, or Recreational Trails Program, and similar Programs in which funds "flow through" ORT to the local unit, may be required to follow ORT's contract award procedures when engaged in projects over which ORT has jurisdiction. The sub-recipient's assignment of contract goals, its project advertising, its bid letting and contract award procedures, and its subletting procedures are subject to ORT's approval, whenever the project is under Department jurisdiction. This holds true even if the sub-recipient is also a direct and/or primary recipient of DOT funds under another Program not subject to ORT scrutiny and thereby is required to have its own DBE Program pursuant to 49 CFR26.
- Forms and contract documents used by the sub-recipient in administration of DBE contract matters in the situation(s) outlined above shall be similar in format and content to those used by ORT.
- The DBEs used by the sub-recipient in fulfillment of requirements of contracts over which ORT has jurisdiction must be Program-certified.

f. Cooperation

All participants in the Program, including, but not limited to DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals, are required to cooperate fully and promptly with federal and state compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be grounds for appropriate action against the party involved, including but not limited to findings of noncompliance, denial or removal of certification, withholding of payments, suspension or debarment.

g. Commercially Useful Function

The regulations require DBEs to perform a commercially useful function in the work of the contract. A DBE is considered to have performed a commercially useful function when it is responsible for execution of the work of a contract and carries out the responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering material, installing (where applicable) and paying for material. The contractor is required to complete a DBE Participation form to designate DBEs to be used to fulfill the goal on the contract and the DBE must certify on the form that it will perform the work listed. The DBEs listed on this form must perform the work proposed unless prior written approval has been obtained from ORT.

h. Enforcement

Project personnel are responsible for enforcing DBE contract provisions with the same vigor as all other contract provisions. The DBE Participation form should be reviewed by project personnel to familiarize themselves with the DBEs listed and the work they are to perform on the project. Project personnel will monitor whether the DBE is performing a commercially useful function and what assistance, if any, the contractor or any other contractors are providing to DBEs. They will observe contractor and DBE activities on projects during construction and report any irregularities or questionable practices concerning DBE operations to the engineer for action. Engineers should notify ORT of any problems relating to DBE firms.

1. Monitoring Procedures

The following procedures have been developed as a means for ORT field personnel to monitor compliance by contractors with DBE regulations:

1. The Responsible Engineer (RE) EEO Field Inspector/Labor Compliance Officer is responsible for reporting irregularities between the contractor's DBE commitments and the actual control and performance of subcontractor DBEs at the job site. Therefore, this individual should conduct a job site inspection at the start of work by a DBE. During this inspection, it should be determined if workers are full-time employees of the DBE and equipment is owned by the DBE. A DBE should not be allowed to use employees or equipment of another company without prior approval by the ORT. The RE may give approval for the DBE to



use another contractor's employees or equipment for temporary use with documentation in the RE's diary. Approval of these types of arrangements should only be for emergency situations where lack of personnel or equipment would impose an unreasonable hardship on the DBE. An example would be an equipment breakdown during a concrete pour.

2. If a DBE desires to use equipment owned by another company or contractor in normal circumstances, the agreement for such usage must be a written lease agreement or purchase order. The RE will review the agreement and, if signed by both parties and otherwise in order, may give verbal approval with documentation in the diary. Continued or repetitive use of another contractor's personnel or equipment for a significant portion of a DBE's work on a project may be an indication that a commercially useful function is not being served.
3. In addition to monitoring the DBE's construction activity, occasional reviews should also be made of delivery tickets, invoices, and similarities between the DBE and other contractors in payroll format and personnel. This will enable project personnel to determine irregularities that may exist in the relationship between the DBE and contractor.
4. The RE's personnel shall monitor payments made by the contractor to the DBE to verify that payment is made within ten days after the contractor receives payment from ORT. Contractors are also required to pay DBEs the amount of any retainage withheld upon ORT's determination that the DBE's work has been satisfactorily completed. The RE's personnel shall review the information submitted by the contractor on the Certificates of Payment and verify that payments agree with current estimates paid to the contractor.
5. The DBE contract provisions will be discussed at each preconstruction conference. At this meeting, the contractor should be prepared to discuss all financial or other assistance the DBE will need, any personnel and equipment the DBE will obtain from the contractor, and how materials will be purchased. The contractor should receive prior approval for any arrangements for assistance prior to the start of work. By receiving ORT's approval of these and other arrangements that appear to conflict with DBE regulations and by performing in the approved manner, the contractor will not be found in noncompliance during the project. Additionally, the contractor and DBE subcontractors will notify the RE at the earliest moment of any problems that arise that may impede attainment of the goal. The RE will then notify the EEO/DBE Section Head.

#### J. Irregularities

- If the DBE is not performing a commercially useful function or if the contractor or another subcontractor performs any portion of the work without prior written approval by ORT, ORT may withhold payment on items of work committed to a DBE subcontractor.
- Should the RE become aware of a questionable arrangement between a contractor and a DBE after work begins, the RE will verbally notify the contractor and DBE

immediately. The contractor and DBE will then be notified in writing. This notification will set forth the nature of the suspected irregular activity and state that payments for the work in question will be withheld until the matter is resolved. A copy of the letter will be transmitted to the EEO/DBE Section Head. A meeting of all parties involved may be requested. The purpose of the meeting is to discuss the situation and allow the contractor and DBE the opportunity to correct any problems. The RE will document the problem(s) in the project diary. If the parties involved cannot agree on a course of action, the contractor may be found in noncompliance with contract provisions.

- If a contractor is believed to be in noncompliance, a review of the situation will be conducted by ORT. ORT may request, through the EEO/DBE Section Head, that a verification review be performed by an External EEO Coordinator. The Coordinator will review project and business records and conduct interviews to determine whether the DBE was performing a commercially useful function on the project. A report and recommendation will be provided to ORT who will review the report and make a determination of commercially useful function.
- If it is determined that a commercially useful function has been served, payments previously withheld will be released. If it is determined the DBE did not perform a commercially useful function, the contractor must submit a corrective action plan to achieve the goal. Payments for the affected work will continue to be withheld until the contractor has satisfied the contract goal or may, with the concurrence of the State Construction Engineer, be released upon approval of the corrective action plan.

k. Achievement of Goals

- The contractor will submit a Certification of Actual Payments to DBEs each estimate period a DBE performs work. This form must be submitted to the RE within 35 days following the end of the estimate period. The RE should compare the submittal to current estimate data and enter the payment data into the Site Manager Access Reports System (SARS) within 10 days of receipt. A Certificate of Payment to DBEs will be submitted by the contractor for each federal-aid project regardless of whether a DBE goal had been established.
- A Final Certificate of Payment to DBEs will be submitted by the contractor for each project regardless of whether a DBE goal had been established. This form will show the total amount paid to each DBE subcontractor and work performed by a DBE prime contractor. The certification is submitted to the RE who will attach it to the original copy of the final estimate.
- If the goal was not met, an explanation for the deficiency must be shown. Failure to meet the goal, unless acceptable good-faith efforts exist, will result in decreasing the final contract amount by the dollar amount of the unmet portion, or other appropriate action.

## 1. Counting and Crediting DBE Participation Toward Goals

- When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward the contract goal.
- Only Program-certified DBEs may be utilized in fulfillment of contract goals.
- The entire amount of that portion of a contract or subcontract that is performed by the DBE's own forces will be counted, including supplies and materials purchased or equipment leased by the DBE (except supplies, materials and equipment the DBE subcontractor purchases or leases from the contractor or its affiliates).
- Fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, 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 that performs a commercially useful function may be counted toward a DBE goal.
- The contractor may count toward the DBE goal only payments made to DBEs for work or services performed or material furnished after the DBE has been approved, either on the list in the contractor's original participation submittal or later as a substitute, and an executed subcontract or purchase order has been acknowledged by ORT. Payments made to a DBE for work, services, or materials performed or furnished prior to approval and acknowledgment of a subcontract will not be counted toward the DBE goal.

## m. Substitution or Replacement of DBEs

- Substitution or replacement of a DBE will only be permitted after award and execution of a contract.
- The DBE subcontractor or an approved substitute DBE can be terminated only with ORT's written consent for good cause that includes the following; the DBE fails or refuses to execute a written contract; fails or refuses to perform the work of its subcontract consistent with normal industry standards; fails to meet reasonable, nondiscriminatory bond requirements; bankrupt, insolvent, or exhibits credit unworthiness; ineligible to work because of suspension and debarment proceedings; not a responsible contractor; voluntarily withdraws from the project and provides written notices; ineligible to receive DBE credit for the type of work required; owner dies or becomes disabled and is unable to complete its work; or documentation of good cause that compels termination. Good cause does not exist where refusal to perform

the work of the subcontract is a result of bad faith or discriminatory action of the prime contractor. The prime contractor must give written notice of the proposal, including the reason for the request to the DBE with a copy to ORT. The DBE has up to five days to respond. The notice period may be reduced if required by public necessity (safety).

- If a DBE subcontractor is unable or unwilling to perform the work of the subcontract, the 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 terminated DBE, to the extent needed to meet the goal established in the contract.
- The contractor must submit to the Resident Engineer a written plan to achieve DBE participation equal to or exceeding the goal or documentation of good faith efforts.
- If a contractor fails to comply with this section, appropriate contract sanctions may be taken, including but not limited to: holding of progress payments, refusal to issue proposals, suspension of work on the project, or suspension of pre-qualification.
- If at the completion of the project, the contractor has failed to meet the DBE goal and has not demonstrated good faith efforts to meet the goal, the contractor will be assessed liquidated damages for the difference between the contract goal and the actual DBE participation achieved. ORT shall deduct the amount from subsequent progress or final estimate payments. In the event insufficient amounts remain for the deduction of the damages, ORT may make a claim against the contractor's bond, suspend the contractor, withhold further proposals, or suspend pre-qualification.
- 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 ORT decisions, change orders or design, a brief explanation must be made by the contractor on the Final Certification of Payments to DBEs prior to submission to the RE. The RE will review the explanation and if satisfactory, will concur.

m. Overall Goal - Highway Funds

- The overall goal will be based on the availability of DBE firms relative to the availability of all contractors (i.e., certified DBEs, subcontractors who have competed on projects to the extent such information is available, and all contractors who have bid on projects).
- A two-step process is required for setting the overall goal. The first step is to establish a base figure for the relative availability of DBEs. Data will be accumulated by federal fiscal year for use in analyzing the number of firms providing quotes and the dollar value of work performed by both DBE and non-DBE firms. The second step is to adjust the base figure based on factors including past participation and evidence from disparity studies.

- ORT will estimate the percentage of DBE firms available to perform work on upcoming federal-aid projects relative to the available pool of all contractors. This percentage will be the baseline annual goal for DBE participation.
- The available pool of all contractors will be derived from a master bidders' list maintained by ORT. This is a list of all firms attempting to participate on federally-assisted projects. When a prime contractor submits a formal bid on a project, the contractor is required to provide a list of all subcontractors, truckers and/or material suppliers that bid or provided quotes on any item in the project, regardless of whether or not the quotes were used in preparing the proposal.
- In order to determine the proposed overall goal, adjustments may be made to the baseline goal considering circumstances affecting the contractors competing or changes in the volume and distribution of contract dollars. ORT will utilize information on the capacity of DBE and non-DBE firms and historical dollar volume of DBE participation in federal-aid contracts. Adjustments will be made for situations such as DBE firms which graduate from the Program, DBE firms no longer eligible to participate in the Program, and other factors as found in 49 CFR 26.45(d). If data is being used from years administered under prior regulations, which includes anything before 2000, adjustments will be made to account for the means of counting participation toward goals under the new regulations (i.e., second-tier subcontracts with non-DBE firms, DBE prime contractors executing subcontracts with non-DBE firms, and other previously counted items no longer eligible for participation goals will be discounted).
- Due to the fact that the federal-aid construction Program and DBE participation are dynamic, ORT will monitor the data available on an ongoing basis. Every three years, the overall goal will be developed based on the latest data available and include consultation with minority, women and general contractors concerning the availability of DBE and non-DBE businesses, effects of discrimination on opportunities for DBEs, and efforts to establish a level playing field for the participation of DBEs.
- If ORT fails to meet its overall DBE goal at the end of the Federal Fiscal Year (FFY), ORT will analyze the reasons for the shortfall and establish specific steps and milestones to correct the problems in order for ORT to meet its goal in the next FFY. ORT will submit its analysis and corrective actions plan to FTA within 90 days after the end of the FFY.

n. Attaining the Overall Goal

- ORT will meet the maximum feasible portion of the overall goal through race-neutral means of facilitating DBE participation. Upon determination of the proposed overall goal, ORT will determine what part of the goal should be met through race-neutral means. Race-neutral includes prime contracts awarded to DBEs through competitive bidding, subcontracts awarded to DBEs on projects without DBE goals, and subcontracts awarded to DBEs not used to meet a project goal. The remainder of the

proposed overall goal which is not expected to be met through race-neutral DBE participation should be met through race-conscious means (i.e., setting DBE participation goals for individual contracts).

- In addition, ORT will utilize the means prescribed by 49 CFR 26.51 to maximize the portion of the goal to be met through race-neutral DBE participation. Some means included in 49 CFR 26.51 are providing technical assistance and other services to DBEs; ensuring wide distribution of the DBE directory to prime contractors; and providing services to help DBEs develop and improve their businesses. These services are available through ORT's DBE Program.

o. Project Goals

- As required by 49 CFR 26, ORT will meet that portion of the overall goal remaining after deducting the portion to be achieved through race-neutral means with race-conscious means. Race-conscious includes DBE goals on those federally- assisted projects with subcontracting opportunities.
- Contracts awarded to DBE contractors and subcontracts committed to DBE subcontractors in each letting will be tracked to determine the amount of the goal achieved through race-neutral and race-conscious means. This information will be made available to ORT to assist in determining the amount of race-conscious goals necessary to achieve the overall goal.
- If, during the year, it is determined that the overall goal will be exceeded, contract goals will be reduced or eliminated to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If it is determined that ORT will fall short of its overall goal, then appropriate modifications will be made in the use of race-neutral and/or race-conscious measures to best achieve the goal.

*Ref 49 CFR Part 26.37 and 26.55(c)*

### Section 8 - Fostering Small Business

In order to foster small business participation, ORT developed a Small Business Provision (SBP), as required by 49 CFR Part 26.39. A small business is defined as an independent for profit business, which performs a commercially useful function and has total gross receipts of not more than \$23.98 million (over a three-year average) and not more than \$1.32 million in personal net worth.

a. Program Components:

- Definition of Small Business:

A Small Business is defined as an independent business whose viability does not depend on its relationship with another firm or firms. It must be a for-profit firm, which performs a commercially useful function and is ready, willing and able to perform work on U.S. DOT/FTA assisted contracts. The firm must also have total gross receipts of **not more than** \$23.98 million (over three-year average) and **not**

**more than** \$1.32 million in personal net worth. Firms must be established businesses with sufficient assets and resources to perform the work of their contracts.

- Contract Requirements:

1. Facilitate competition
2. Eliminate obstacles
3. Unbundling of contracts
4. Race-neutral small business set-aside
5. Multi-year design build contract

- Certification Requirements:

1. Complete verification application for SBP and provide all requested supporting documentation.
2. Once approved, the organization will be added to the on-line SBP list with all organization codes listed.

- b. Goal:

ORT's Program goal award amount will be one to two percent (1.83%) of its FTA/DOT qualifying awards. Set aside projects will be utilized as needed to achieve Program goals.

All DBE's will automatically be considered on the SBP list, but all Small Businesses must apply and meet all requirements for ORT's Program in order to participate on these contracts. There will be a separate listing of all certified Small Businesses and all certified DBE's will be included in that list. ORT codes will also be listed with the business. Each firm must perform a commercially useful function in their specific work category.

Selection of projects will include, but are not limited to the location of the project and number of firms available that perform the scope of work involved in the project. The projects will be in areas where there is competition.

In order for a firm to bid on a Small Business set-aside project the firm must submit an application and the firm's tax returns for the past three years. The certified firms are required to submit annual affidavits to affirm the status of their business.

Presentations at various meetings will be conducted as needed in order to share the Program element. The Program requirements will be listed on ORT's website and other publications.

- c. ORT is responsible for implementing and monitoring the SBP Program. The Executive Director will be responsible for tracking participation.

- d. An on-line listing of all SBP participants will be posted and updated four-weeks prior to every letting.

*Ref 49 CFR Part 26.39*

**OZARK REGIONAL TRANSIT  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

**Chapter III - Goals, Good Faith Efforts, and Counting**

**Section 1 - Overall Goals**

- a. ORT submits its overall goal to DOT on October 1, on a triennial basis. The next submission of ORT's FTA Goal Setting Methodology was due October 1, 2019 for the 2020-2022 fiscal years. The next submission of ORT's FTA Goal Setting Methodology is due October 1, 2020 for the 2022-2025 fiscal years.

Prior DBE Goals and Methodology can be accessed online at: [www.ozark.org](http://www.ozark.org).

*Ref 49 CFR Part 26.45*

**Section 2 - Shortfall Analysis**

- a. 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, ORT will do the following:
- Analyze the reasons for the difference between the overall goal and the actual achievement;
  - Establish steps and milestones to correct the deficiencies identified in order to meet the goal in the new federal fiscal year; and
  - This analysis and corrective actions will be submitted to the FTA Regional Office 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 ORT will achieve DBE awards and commitments that would be necessary to allow ORT to meet the overall goal at the end of the federal fiscal year, the FTA may require ORT 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.

- b. If the awards and commitments reported on the Uniform Report of Awards and Commitments and Payments at the end of any federal fiscal year for FTA projects is less



than the overall goal applicable to that federal fiscal year, ORT will do the following:

- Analyze the reasons for the difference between the overall goal and the actual achievement; and
- Establish steps and milestones to correct the deficiencies identified in order to meet the goal in the new federal fiscal year.

ORT will retain the analysis and correction action on file for three years.

*Ref 49 CFR Part 26.47*

### Section 3 - Transit Vehicle Manufacturers (TVM)

ORT will require each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, to certify that it has complied with the requirements of this section. Alternatively, ORT may, at its discretion and with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of the TVM complying with this element of the Program.

ORT will be required to submit, within 30 days of making an award, the name of the successful bidder for transit vehicles and the total dollar value of the contract to the appropriate FTA channels.

*Ref 49 CFR Part 26.49*

### Section 4 - Project Goals

- a. ORT will meet the maximum feasible portion of the overall goal through race-neutral means of facilitating DBE participation. Upon determination of the proposed overall goal, ORT will determine what part of the goal should be met through race-neutral means. Race-neutral includes prime contracts awarded to DBEs through competitive bidding, subcontracts awarded to DBEs on projects without DBE goals, and subcontracts awarded to DBEs not used to meet a project goal. The remainder of the proposed overall goal which is not expected to be met through race-neutral DBE participation should be met through race-conscious means (i.e., setting DBE participation goals for individual contracts).
- b. In addition, ORT will utilize the means prescribed by 49 CFR 26.51 to maximize the portion of the goal to be met through race-neutral DBE participation. These include providing technical assistance and other services to DBEs; ensuring wide distribution of the DBE directory to prime contractors; and providing services to help DBEs develop and improve their businesses. These services are available through ORT's DBE Program.
- c. An apparent successful bidder shall furnish the DBE participation form(s). This documentation may be submitted with the bid or within five (5) calendar days after the bid opening.

Section 5 - Good Faith Efforts

- a. Bid openings will be conducted in accordance with ORT's established procedures.
- b. For contracts having DBE goals, the apparent successful bidder shall submit to ORT (either with the bid or within five calendar days after the conditional award of the contract) the proposed participation by Disadvantaged Business Enterprises. This information may be submitted on the form provided in the proposal (DBE Participation form) or other form specified by the ORT. The bidder shall list the names and addresses of the DBE subcontractors to be used to satisfy the percentage goal. The DBE's certification by the Program must be fully in effect and without reservation at this time. The bidder shall also provide an itemized description of the work each DBE subcontractor is to perform, the dollar value of each item to be included in the DBE subcontract, written documentation of the bidder's commitment to use a DBE subcontractor to meet a contract goal, and written confirmation from the DBE that it is participating in the contract as provided in the contractor's commitment. An apparent low bidder intending to use a DBE supplier, manufacturer, lessor, or non-construction service provider in or toward fulfillment of a contract goal shall indicate such on the DBE Participation form, giving the name of the supplier, lessor, etc.; type of service; total value of service; and creditable value of the service.
- c. Only the value of work actually performed by a DBE will be counted toward the DBE goal. If the apparent successful bidder is a certified DBE, the bidder must propose participation in the contract by DBEs to achieve the goal. Work actually performed by the DBE bidder will be credited toward the goal. If a DBE subcontractor is proposed to fulfill a goal, only the work actually performed by the DBE subcontractor will be counted toward the goal. Any work the DBE subcontractor further subcontracts to a non-DBE firm will not count toward a goal, but work subcontracted to another DBE will.
- d. The overall DBE goal shall be credited for the federal share of work performed by DBEs on the contract.
- e. After a conditional award is made and the apparent successful bidder has submitted the required DBE information, ORT will determine the adequacy of the bidder's efforts to meet the contract goal, as outlined above. If those requirements are met, the conditional status will be removed and the contract will be forwarded to the bidder for execution.
- f. 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 fully successful. **Only those efforts made by the bidder to obtain DBE participation prior to the letting will be considered in the evaluation of good faith efforts.** If ORT accepts a good faith effort, the contractor is expected to continue efforts throughout the life of the project to attain the DBE participation goal and to document such efforts.

- g. If it is determined that the goal was not met or a good faith effort made, the bidder will be notified and provided an opportunity for administrative reconsideration prior to the execution of the contract. As part of the reconsideration, the bidder may provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so. A written request for administrative reconsideration must be submitted within two days to: Executive Director/DBELO, Ozark Regional Transit, 2423 E. Robinson Avenue, Springdale, Arkansas 72764.
- The decision on the reconsideration will be made by the Executive Director and Chief Financial Officer and the bidder will have the opportunity to meet with the Executive Director and Chief Financial Officer in person to discuss the issues.
  - The bidder will be provided a written decision on the reconsideration explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so. The result of the reconsideration is not administratively subject to appeal to the DOT/FTA.
- h. If the bidder to whom the contract is conditionally awarded refuses, neglects, or fails to meet the DBE goals or to furnish acceptable documentation of efforts to meet these goals, the bidder will not be provided a contract for execution, and the proposal guaranty filed with the bid shall become the property of the ORT, not as a penalty, but as liquidation of damages to the Program.
- i. The DBE staff will review each DBE Participation form to ensure each DBE listed is currently certified to perform the items of work indicated, the negotiated price is reasonable, and the value of the work to be performed fulfills the prescribed contract goal.
- j. Determination of apparent low bidder, acceptability of offered price, and/or rejection of bids and readvertisement will be governed by existing standards of ORT. All bid conditions having been met, ORT will proceed with award of the contract according to normal procedures.
- k. The contractor's fulfillment of DBE obligations and commitments will be monitored throughout the life of the contract by review of requests to subcontract, compliance reviews conducted on the project, and reports of actual payments to DBEs.
- l. The contractor awarded the contract shall make available upon request a copy of all DBE subcontracts.

*Ref 49 CFR Part 26.53*

#### Section 6 - Substitution or Replacement of DBEs

- a. Substitution or replacement of a DBE will only be permitted after award and execution of a contract.
- b. The DBE subcontractor or an approved substitute DBE can be terminated only with

ORT's written consent for good cause that includes the following; the DBE fails or refuses to execute a written contract; fails or refuses to perform the work of its subcontract consistent with normal industry standards; fails to meet reasonable, nondiscriminatory bond requirements; bankrupt, insolvent, or exhibits credit unworthiness; ineligible to work because of suspension and debarment proceedings; not a responsible contractor; voluntarily withdraws from the project and provides written notices; ineligible to receive DBE credit for the type of work required; owner dies or becomes disabled and is unable to complete its work; or documentation of good cause that compels termination. Good cause does not exist where refusal to perform the work of the subcontract is a result of bad faith or discriminatory action of the prime contractor. The prime contractor must give written notice of the proposal, including the reason for the request to the DBE with a copy to ORT. The DBE has up to five days to respond. The notice period may be reduced if required by public necessity (safety).

- c. If a DBE subcontractor is unable or unwilling to perform the work of the subcontract, the 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 terminated DBE, to the extent needed to meet the goal established in the contract.
- d. The contractor must submit to the Resident Engineer a written plan to achieve DBE participation equal to or exceeding the goal or documentation of good faith efforts.
- e. If a contractor fails to comply with this section, appropriate contract sanctions may be taken, including but not limited to: holding of progress payments, refusal to issue proposals, suspension of work on the project, or suspension of pre-qualification.
- f. If at the completion of the project, the contractor has failed to meet the DBE goal and has not demonstrated good faith efforts to meet the goal, the contractor will be assessed liquidated damages for the difference between the contract goal and the actual DBE participation achieved. ORT shall deduct the amount from subsequent progress or final estimate payments. In the event insufficient amounts remain for the deduction of the damages, ORT may make a claim against the contractor's bond, suspend the contractor, withhold further proposals, or suspend pre-qualification.
- g. 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 ORT decisions, change orders or design, a brief explanation must be made by the contractor on the Final Certification of Payments to DBEs prior to submission to the Resident Engineer. The Resident Engineer will review the explanation and, if satisfactory, will concur.

*Ref 49 CFR Part 26.53*

#### Section 7 - Counting and Crediting DBE Participation Toward Goals

- a. When a DBE participates in a contract, only the value of the work actually performed by the DBE is counted toward the contract goal.
- b. Only Program-certified DBEs may be utilized in fulfillment of contract goals.

- c. The entire amount of that portion of a contract or subcontract that is performed by the DBE's own forces will be counted, including supplies and materials purchased or equipment leased by the DBE (except supplies, materials and equipment the DBE subcontractor purchases or leases from the contractor or its affiliates).
- d. Fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, count toward the goal, provided those fees are determined to be reasonable and not excessive compared with fees customarily allowed for similar services.
- e. 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.
- f. Only expenditures to a DBE contractor that performs a commercially useful function may be counted toward a DBE goal.
- g. The contractor may count toward the DBE goal only payments made to DBEs for work or services performed or material furnished after the DBE has been approved, either on the list in the contractor's original participation submittal or later as a substitute, and an executed subcontract or purchase order has been acknowledged by ORT. Payments made to a DBE for work, services, or materials performed or furnished prior to approval and acknowledgment of a subcontract will not be counted toward the DBE goal.
- h. The dollar value of work performed under a contract with a firm after it has ceased to be certified will not be counted toward the overall goal.
- i. The participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligation on a contract will not count until the amount being counted has actually been paid to the DBE.

*Ref 49 CFR Part 26.55*

### Section 8 - Commercially Useful Function

- a. A commercially useful function is considered to be performed when a DBE is responsible for execution of the work of a contract and carries out the responsibilities by actually performing, managing, and supervising the work involved. The DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, installing (where applicable), and paying for the material. To determine whether a DBE is performing a commercially useful function, the amount of work subcontracted, industry practices, and other relevant factors shall be evaluated on a project by project basis.
- b. No credit will be given toward the DBE goal for any subcontracting arrangement which is contrived to artificially inflate DBE participation. Of particular concern is the interjection of DBE middlemen or passive conduits which are inconsistent with standard

industry practices or which serve no commercially useful function and arrangements in which a DBE subcontractor is acting essentially as a broker. A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. Regardless of whether an arrangement between the contractor and a DBE represents standard industry practice, where such an arrangement erodes the ownership or control of the DBE or does not meet the commercially useful function requirement, the contractor shall receive no credit toward the DBE goal.

- c. Consistent with normal industry practices, a DBE may enter into subcontracts. A DBE subcontractor will be deemed to have performed a commercially useful function and the contractor will be allowed DBE goal credit for the work actually performed by the DBE when a DBE subcontractor performs at least 30 percent of the subcontract. This work shall be performed by the DBE's normal workforce.
- d. Determinations of commercially useful function
  - When it is determined or presumed that a DBE is not or would not be performing a commercially useful function and the services offered by the DBE are therefore deemed not creditable toward contract goals, the DBE may present evidence to ORT to rebut that presumption.
  - ORT's decision on the rebuttal is subject to review by the U.S. Department of Transportation. During the period pending decision on such rebuttal, ORT's determination regarding non-eligibility for contract goal credit remains valid, and the filing of the rebuttal shall in no manner serve to delay the letting or award of any contract.
- e. Should the contractor fail to meet the DBE goal prescribed in the special provisions, the contractor's good faith efforts will be evaluated. If the contractor's good faith efforts are unacceptable, a sum in like amount to the unmet portion of the goal will be withheld from the final pay estimate.

*Ref 49 CFR Part 26.55*

#### Section 9 - Counting Expenditures to DBEs for Procurement of Supplies, Materials and Services Toward Contract Goals

- a. A contractor may count toward a DBE goal those expenditures for materials and supplies obtained from DBE suppliers and manufacturers, provided the DBEs assume the actual contractual responsibility for the provision of the materials and supplies.
- b. To be counted toward fulfillment of a contract goal, the following applies:
  - Expenditures must be to a DBE currently certified by the PROGRAM as a bona fide DBE in accordance with Chapter IV of this Program and performing as an independent entity.

- The DBE must perform a commercially useful function consistent with normal industry practice for which the credit is given. The DBE must be principal party and signatory to the agreement and not merely the salesperson or agent in the employ of the supplier, manufacturer, or service provider.
  - The work or service provided by the DBE must be clearly identified with a federally assisted project and as a discrete portion of the contract work, not simply a service necessary as part of the contractor's general business overhead.
- c. Capital expenditures for tools, equipment, vehicles, field office furniture, and similar property items, even though such items are used on the project and purchased from DBEs, are not creditable toward contract DBE goals. Lease expenditures may be eligible for credit toward contract goals (see paragraph g of this Section).
- d. Expenditures for materials and supplies obtained from DBE suppliers and manufacturers for use in the contractor's general operations are not creditable in whole or part toward contract goals, even though a portion of such items may be used in the administration and/or execution of a project. Examples in this category of expenses are stationary and office supplies, janitorial supplies, health and safety supplies, salvageable and reusable signs, bulletin boards, portable buildings, etc. This does not prohibit the contractor from subcontracting out the "Signs and Barricades" items of a contract to a DBE, in which event the subcontract would count toward the contract goal.
- e. Expenditures for lease of a particular piece or pieces of equipment from DBEs for exclusive use on the project for which DBE participation is to be claimed may be counted 60 percent toward contract goals, provided the DBE actually has ownership or control of the equipment and is considered a regular dealer.
- f. **Trucking Services**
- Expenditures to and/or use of DBEs to perform trucking services to the particular project will be counted in the following manner toward contract goals, if these services are performed under an agreement (purchase order, subcontract, etc.) between the contractor and the certified DBE providing these services on a specific project.
  - The DBE must be responsible for the management and supervision of the entire trucking operation for the items on its subcontract or purchase order, including scheduling, providing sufficient trucks to accomplish the haul, and coordinating the work with the contractor. There cannot be a contrived arrangement for the purpose of meeting DBE goals.
  - The DBE must own and operate at least one fully licensed, insured, and operational truck used on the project when hauling operations are in progress.
  - 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 will receive credit for the total dollar value of the transportation services attributable to no more than twice the number of trucks owned by the DBE and leased from another DBE firm. Long-term lease arrangements are an acceptable form of **"ownership."**

- DBEs that haul materials, which are not included in an approved materials estimate, to a contractor's stockpile and are not immediately incorporated into the project may be paid by the prime contractor or first-tier subcontractor, as the case may be, prior to the material being incorporated into the project. However, the prime contractor will not receive payment from ORT until the materials from the stockpile are incorporated into the project. The amount credited toward the DBE goal will be limited to the final contract item amount for the project.

g. Lease Agreements

- The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.
- The DBE may also lease trucks from a non-DBE firm or owner-operator. The total value of the transportation services provided by the non-DBE firm or owner-operator will be credited to the DBE so long as the number of trucks provided by the non-DBE or owner-operator does not exceed the number of trucks owned by the DBE or leased by the DBE from other DBE firms. For trucks leased by the DBE in excess of the total number of trucks owned by the DBE or leased by the DBE from other DBE firms, the DBE will receive credit only for the fees or commissions it receives as a result of the lease arrangements for the excess trucks.
- The DBE may lease trucks under a long-term lease arrangement from independent equipment leasing companies. An "independent equipment leasing company" is defined as a company that leases equipment to the public. A "long-term lease" is defined as a twelve-month or longer lease period. The drivers, fuel, minor maintenance responsibility, and full control of the leased trucks must rest solely with the DBE owner, and this must be stipulated in the lease agreement. Drivers must be employees of the DBE, subject to tax withholding, worker's compensation requirements, unemployment, etc. Leased trucks must display the name and identification number of the DBE. The DBE will receive full credit for the full value of the transportation services provided by trucks leased and operated in this manner. A DBE supplier (regular dealer) must utilize this type of lease arrangement to supplement distribution equipment owned by the DBE firm to receive credit for transportation services.
- All lease agreements 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. A copy of each lease agreement must be provided to and approved by the RE before the truck begins hauling. The agreement must reflect the name of the lessor, cab card registration numbers of all leased trucks, the description of the truck(s), the amount and terms of the lease and method of payment (hour, ton, cubic yard, or number of loads hauled), and, if owner-operator, his/her Social Security number. The lease agreement(s) will be maintained in the



office of the RE.

- The apparent low bidder should include only the value of the transportation services to be performed by DBEs, plus the value of the fee or commission paid to non-DBE firms for hauling services.
- Counting participation for trucking is determined by application of Section 9f.

h. Suppliers, manufacturers, and other providers of services

- A contractor may count 100 percent of the expenditures to a DBE manufacturer. For purposes of this Program, a "manufacturer" is a business that operates or maintains a factory or establishment that produces on the premises the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.
- The contractor may count 60 percent of its expenditures to DBE suppliers that are regular dealers. A regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract for incorporation into the work 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 business must be an established, regular business that engages in, as its principal business and under its own name, the purchase and sale or lease of the products in question. A trucking firm or owner-operator will not be considered a supplier, nor will a supplier be considered a trucking firm.
- A regular dealer in such bulk items as asphalt, steel, cement, gravel, petroleum products, or stone must own or lease, and operate a refinery, pit, quarry, concrete plant, or other such facility that sells materials to the public. A person or firm may be a regular dealer in petroleum products or asphalt binder without owning, operating, or maintaining a place of business where these items are bought, kept in stock, and regularly sold to the public, 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 eliminating the middleman. Supplying metal or concrete pipe is viewed as brokering, and is considered inconsistent with DBE Program requirements.

- Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
- With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, will count toward DBE goals, provided the fees are determined to be reasonable and not excessive as compared with fees customarily allowed for similar services. None of the cost of the materials and supplies will count toward the goal, however.
- Credit will be allowed toward a DBE goal for 100 percent of the amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant or managerial services, or for providing bonds or insurance specifically required for the performance of a federally-funded contract, provided the fee is determined to be reasonable and not excessive as compared with fees customarily allowed for similar services.

i. Identify on payment logs and proof of DBE utilization

- The contractor will be required to furnish ORT, by estimate period, a report certifying to the actual payments made to DBE contractors, suppliers, manufacturers, and/or non-construction services in fulfillment of the DBE goal. These certificates are to be submitted by the contractor to the Resident Engineer and entered into the Site Manager Access Reports System (SARS) by residency staff.
- The contractor will be required to furnish ORT a final report certifying to the total actual payment(s) made to DBE subcontractors, suppliers, manufacturers and/or non-construction services rendered by DBEs in fulfillment of the contractor's goal commitment on the project. This certificate is to be submitted by the contractor through the Resident Engineer. It will be attached to the original copy of the final estimate. The certificate also requires an explanation from the contractor for failure to meet the specified goal percentage.

*Ref 49 CFR Part 26.55*

**OZARK REGIONAL TRANSIT  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

**Chapter IV - DBE Certification Standards**

**Disclaimer: ORT does not in itself certify any DBE. ORT relies on the State of Arkansas (the State) as the certification authority.**

Section 1 - Burdens of Proof

- a. In determining whether to certify a firm as eligible to participate as a Program DBE, the following standards apply:
- The firm seeking certification has the burden of demonstrating, by a preponderance of the evidence, that it meets the requirements of 49 CFR 26 concerning group membership or individual disadvantage, business size, ownership, and control.
  - There is a rebuttable presumption that members of designated groups identified in 49 CFR 26.67(a) are socially and economically disadvantaged. This means that members of those groups do not have the burden of proving social and economic disadvantage. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups listed in Section 26.67(a). Applicants are obligated to provide information concerning their economic disadvantage (*see 49 CFR Part 26.67*)
  - Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving, by a preponderance of the evidence, that they are socially and economically disadvantaged.
  - 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) must be made by considering all the facts in the record, viewed as a whole.

*Ref 49 CFR Part 26.61*

Section 2 - Group Membership

- a. If the State has a well-founded reason to question whether an individual is a member of a group that is presumed socially and economically disadvantaged, requires the individual to demonstrate, by a preponderance of the evidence, that he or she is a member of the group.
- b. The State will provide the individual a written explanation of its reasons for questioning his or her group membership and a written request for additional evidence.
- c. In implementing this section, the State must take special care to ensure that the State does

not impose a disproportionate burden on members of any particular designated group. Imposing, a disproportionate burden on members of a particular group could violate 49 CFR Part 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR Part 21.

- To make such a determination, consideration will be given to whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. The applicant may be required to produce appropriate documentation of group membership.
- An individual claiming to be a member of a presumed group who is determined not to be a member of a designated disadvantaged group, must demonstrate social and economic disadvantage on an individual basis.
- Determinations regarding group membership are subject to the State's appeal procedures.

*Ref 49 CFR Part 26.63*

### Section 3 - Business Size Determination

- a. The Certification Committee must determine whether an applicant firm (including its affiliates) is an existing small business as defined by Small Business Administration (SBA) standards. If the applicant does not meet the small business standards, it is not eligible to participate as a DBE under 49 CFR 26, and no further determinations need be made.
- b. In determining whether a business is considered small, the standards established by the Small Business Administration in 13 CFR 121 appropriate to the type(s) of work the firm seeks to perform in U.S. DOT-assisted contracts will be applied. Currently, the following business size factors apply:
  - Construction: Average annual gross receipts for the three preceding fiscal years shall not exceed \$23.98 million.
  - Special Trade Contractor: Average annual gross receipts for the three preceding fiscal years shall not exceed \$15 million.
  - Land subdivision (Engineering, Architectural, and Surveying Services): Average annual gross receipts for the three preceding fiscal years shall not exceed seven million.
  - Suppliers of Manufactured Goods: The business, including its affiliates, shall not have more than 500 employees.
    1. A firm is not eligible if the firm (including affiliates) has had average annual gross receipts, as defined by SBA regulations (13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$23.98 million. This figure is adjusted by the Secretary of Transportation from time to time.

2. Necessary evidence to determine business size includes the gross receipts of the firm and its affiliates for the last three years.
3. "Affiliates" is defined in 13 CFR 121.103 as: "Concerns are affiliates of each other when either directly or indirectly: (a) one concern controls or has the power to control the other, (b) a third-party (or parties) controls or has the power to control both, or (c) an identity of interest between or among parties exists such that affiliation may be found." In determining whether affiliation exists, consideration shall be given to such factors as common ownership, common management and contractual relationships.

*Ref 49 CFR Part 26.65*

#### Section 4 Social and Economic Disadvantage Determination

##### a. Presumption of Disadvantage

- The State must presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, and other minorities found to be disadvantaged by the SBA, are presumed to be both socially and economically disadvantaged. Applicants must submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged. Definitions of these groups can be found in Appendix C.
- Each individual owner of a firm applying to participate as a DBE whose ownership and control are relied upon for DBE certification must certify that he or she has a personal net worth that does not exceed \$1.32 million.
- The State must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation, through the submission of Form No. A-1146, without change or revision. Where necessary, the State in order to accurately determine an individual's personal net worth, on a case-by-case basis, may require additional financial information from the owner of an application firm (e.g. Information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

In determining an individual's net worth, the State must observe the following requirements:

- Exclude an individual's ownership interest in the application firm.
- Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan

balances.

- A contingent liability does not reduce an individual's net worth.
- With respect to assets held in vested pension plans, Individual Retirement Accounts, 401 (k) accounts, or other retirement savings or investment Programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.
- Notwithstanding any provision of Federal or state law, ORT must 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, that ORT must transmit this information to USDOT in any certification appeal proceeding under 49 CFR Part 26.89 or to any other state to which the individual's firm has applied for DBE certification.

b. Rebuttal of presumption of disadvantage

An individual's presumption of economic disadvantage can be rebutted:

- If the statement of personal net worth that an individual submits shows the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. The State is not required to have a proceeding in order to rebut the presumption of economic disadvantage in this case.
- If the statement of personal net worth and supporting documentation that an individual submits demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, the State may consider factors that include, but are not limited to the following:
  1. Whether the average adjusted gross income of the owner over the most recent three (3) year period exceeds \$350,000.00;
  2. Whether the income was unusual and not likely to occur in the future;
  3. Whether the earnings were offset by losses;
  4. Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
  5. Other evidence that income is not indicative of lack of economic disadvantage;  
and
  6. Whether the total fair market value of the owner's assets exceed \$6 million.

- If the State has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged, the State may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual.
- In such a proceeding, the State has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. The State may require the individual to produce information relevant to the determination of his or her disadvantage.
- When an individual's presumption of social and economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the Program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her personal net worth remains above that amount.

c. Transfers within two years.

- Except as set forth in the paragraph below, the State must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust with a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the Program or within two years of the State's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.
- The State must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries and retirements.
- In determining access to capital and credit, any assets that the individual transferred within such two-year period that are not considered in evaluating the individual's assets and net worth will be considered.

d. Individual Determination of Social and Economic Disadvantage:

Individual determinations of social and economic disadvantage. Eligibility of firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged will be determined on a case-by-case basis. The applicant firm has the burden of demonstrating, by a preponderance of the evidence, that the individuals who own and control the firm are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall

not be considered economically disadvantaged. The following guidance will be considered in making individual determinations of social and economic disadvantage:

**Social Disadvantage:** Socially disadvantaged individuals are those who have been subjected to racial or ethnic prejudice or cultural bias within American society because of their identities as members of groups and without regard to their individual qualities. Social disadvantage must stem from circumstances beyond their control. Evidence of social disadvantage must include the following elements:

1. At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;
  2. Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and
  3. Negative impact on entry into or advancement in the business world because of the disadvantage. Education, employment and business history, where applicable, must be considered to determine if the totality of circumstances shows disadvantage in entering into or advancing in the business world.
  4. The State notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities-especially persons with severe disabilities (e.g., significant mobility, vision or hearing impairments)-may be socially and economically disadvantaged.
  5. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, the Certification Committee will look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria.
- iii. **Economic Disadvantage:** Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.
1. A description of the conditions that are the basis for the claim must be submitted in a narrative format, along with personal financial information. Married applicants must submit separate financial information for his or her spouse, unless the individual and spouse are legally separated.
    - a. The following factors will be examined when diminished capital and credit opportunities are considered: personal financial condition, including



personal income for the last two years; personal net worth, and fair market value of all assets. Financial condition will be compared to the financial profiles (total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth) of small businesses in the same primary industry classification, or in similar lines of business, which are not owned by socially and economically disadvantaged individuals.

*Ref 49 CFR Part 26.67*

## Section 5 - Ownership Determination

### a. Ownership

- In determining whether the socially and economically disadvantaged participants in a firm own the firm, the State will consider all the facts in the record, viewed as a whole, including the origin all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and aims- length practices.
- To be a Program eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.
  1. In the case of corporations, socially and economically disadvantaged individuals must own at least 51 percent of the aggregate of all stock outstanding.
  2. In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.
  3. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.
- The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.
- The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risk and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.
- All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining

the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if:

1. The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
  2. The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.
1. The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value of the firm. 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.
  11. The following requirements apply to situations in which expertise is relied upon as part of a disadvantaged owner's contribution to acquire ownership:
    1. The owner's expertise must be:
      - a. In a specialized field;
      - b. Of outstanding quality;
      - c. In areas critical to the firm's operations;
      - d. Indispensable to the firm's potential success;
      - e. Specific to the type of work the firm performs; and
      - f. Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.
    2. The individual whose expertise is relied upon must have a significant financial investment in the firm.
- The State will deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual:
    1. As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section;

2. Through inheritance, or otherwise because of the death of the former owner.
- The State will presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is:
    1. Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
    2. Involved in the same or a similar line of business; or
    3. Engaged in an ongoing business relationship with the firm or an affiliate of the firm, for which the individual is seeking certification.
  - To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate, by clear and convincing evidence, that:
    1. The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
    2. The disadvantaged individual actually controls the management, policy and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.
  - When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire ownership interest asserted by one spouse, the State will deem that ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. A greater portion of joint or community property assets will not be counted toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.
  - A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.
  - The following factors will be considered in determining ownership; however, a contribution of capital will not be regarded as failing to be real and substantial, or used to find a firm ineligible, solely because:
    1. ownership interest was acquired as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph (ii) of this section;
    2. a provision for the co-signature of a spouse who is not socially and economically disadvantaged on financing agreements, contracts for the purchase or sale of real

or personal property, bank signature cards, or other documents; or

3. ownership of the firm or its assets is transferred for adequate consideration from a spouse who is not socially and economically disadvantaged to a spouse who is such an individual. In this case, the State will give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

*Ref 49 CFR Part 26.69*

## Section 6 Determination of Control

### a. Control

- In determining whether socially and economically disadvantaged owners control a firm, the State will consider all the facts in the record, viewed as a whole.
- Only an independent business may be certified as a DBE. An independent business is one whose viability does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, the Certification Committee will:
  1. scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources;
  2. consider 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 potential DBE firm;
  3. examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a contractor compromises the independence of the potential DBE firm; and
  4. consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.
- A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executor agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm.
- The disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term

decisions on matters of management, policy and operations.

1. A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
  2. In a corporation, disadvantaged owners must control the board of directors.
  3. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.
  4. In a limited liability company, if the articles of organization provide that management of the limited liability company is vested in a manager or managers, one or more disadvantaged owners must serve as manager, with control over all member decisions. If the articles of organization do not provide for a manager or provide that management is vested in the members, one or more disadvantaged owners must serve as a member, with control over all member decisions.
- Individuals who are not socially and economically disadvantaged or immediate family members may be involved in a DBE firm as owners, managers, employees, stockholders, officers and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
  - The socially and economically disadvantaged owners of the firm may delegate various means of management, policymaking, or daily operations to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged. Such delegation of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the disadvantaged owners in the firm's overall affairs must be such that the Certification Committee can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management and policy.
  - The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to the type of business in which the firm is engaged and in the firm's operations. The socially and economically 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 socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise which is limited to office management, administration or bookkeeping functions and unrelated to the principal business activities of the firm is insufficient to demonstrate control.
  - If state or local law requires individuals to have a particular license or other credential in order to own and/or control a certain type firm, the socially and economically

disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, the State will not deny certification solely on the ground that the person lacks the license or credential. However, the State will take into consideration the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

- The Certification Committee will consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm. Such consideration will be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income and any other explanations for the differences proffered by the firm.
  1. Where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, the Certification Committee may consider a difference between the remuneration of the former and current controller of the firm as a factor in determining who controls the firm, particularly when the non-disadvantaged individual remains involved and continues to receive greater compensation than the disadvantaged individual.
  2. In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities.
- A socially and economically disadvantaged individual may control a firm even though one or more immediate family members who are not disadvantaged participate in the firm as a manager, employee, owner, or in another capacity. A judgment will be made about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as the Certification Committee does in other situations, without regard to whether or not the other persons are immediate family members.
- If the Certification Committee cannot determine that the disadvantaged owners, as distinct from the family as a whole, control the firm, then the socially and economically disadvantaged owners have failed to carry their burden of proof concerning control, even though they may participate significantly in the firm's activities.
- Where a firm was formerly owned and/or controlled by a non-disadvantaged person, its ownership and/or control have been transferred to a socially and economically 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, and further 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, the Certification Committee will consider whether the firm owns equipment necessary to perform its work. Where leasing equipment is a normal industry practice and the lease does not involve a relationship with a contractor or other party which may compromise the independence of the firm, a firm will not be considered ineligible because it leased its equipment.
- The Certification Committee will grant certification to a firm only for specific types of work in 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 that type of work and provide documentation that it has performed the work. The Certification Committee will not require a firm to recertify or submit a new application, but will verify the owner's control of the firm in the additional categories of work.

#### b. NAICS Codes

- The types of work a firm can perform (whether on initial certification or when a new type of work is added) will be described in terms of the most specific available NAICS code for the type of work. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide. Multiple NAICS codes may be assigned where appropriate.
- Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which the UCP has determined the firm's owners can control. The firm bears the burden of providing detailed company information the State needs to make an appropriate designation.
- If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the State, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and the State will not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.
- The State is not precluded from changing a certification classification or description if there is a factual basis in the record.

#### c. Franchise

- A business operating under a franchise or license agreement may be certified if it meets the certification standard 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 or subject the partnership to contract or tort liability.
- The disadvantaged individuals controlling a firm may use an employee leasing company in the normal course of business. 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 includes being responsible for accepting, rejecting, assigning and otherwise controlling on-the-job activities of the employees. A DBE may not lease employees from a pre-qualified contractor or other subcontractor performing on the project without prior approval from the State.

*Ref 49 CFR Part 26.71*

### Section 7 - Other Rules Affecting Certification

#### a. Other Certification Considerations

- Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph ii of this section, ORT will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.
- The State may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the Program.
- The State must evaluate the eligibility of a firm on the basis of present circumstances. The State must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of 49 CFR Part 26.
- the State will not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contract at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership and control requirements of 49 CFR Part 26, the firm is eligible for certification.
- DBE firms and firms seeking DBE certification shall cooperate fully with the State's requests (and USDOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.



- Only firms organized for profit may be eligible DBEs. Not-for-profit organizations, even though controlled by socially and economically disadvantaged individuals, are not eligible to be certified as DBEs.
- An eligible DBE firm must be owned by individuals who are disadvantaged. Except as provided as follows, a firm that is not owned by such individuals, but instead is owned by another firm - even a DBE firm - cannot be an eligible DBE.
  1. If disadvantaged individuals own and control a firm through a parent or holding company established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, the subsidiary may be certified if it otherwise meets all other eligibility requirements. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
  2. Such a subsidiary can be certified only if disadvantaged individuals cumulatively own 51 percent of the subsidiary. Illustrative examples of cumulative ownership provisions are included in 49 CFR 26.73(e)(2).
  3. Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by disadvantaged individuals.
- A DBE firm is not required to be prequalified as a condition for certification.
- A firm that is owned by an Indian tribe or Native Hawaiian organization as an entity, rather than by individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR 26.65 and be controlled by socially and economically disadvantaged individuals, as provided in 49 CFR 26.71.
- The State will apply the following special rules to the certification of Alaska Native Corporations (ANCs):
  1. Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:
  2. The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
    - a. The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and,

- b. The subsidiary, joint venture, or partnership entity has been certified by the SBA under the 8(a) or small disadvantaged business Program.
- As a recipient to whom an ANC-related entity applies for certification, ORT will not sue the USDOT uniform application firm. The State will obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of the previous paragraphs. ORT will also obtain sufficient information about the firm to allow it to administer the DBE Program (e.g., information that would appear in the DBE Directory).
  - If an ANC-related firm does not meet all the conditions of the previous paragraphs, then it must meet the requirements of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

*Ref 49 CFR Part 26.73*

**OZARK REGIONAL TRANSIT  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

**Disclaimer: ORT does not in itself certify any DBE. ORT relies on the State of Arkansas (the State) as the certification authority.**

## **Chapter V - Certification Procedures**

### **Section 1 - Unified Certification Programs**

- a. In accordance with the requirements of 49 CFR Part 26.81, USDOT recipients in Arkansas adopted a Unified Certification Program (UCP). The Program was submitted to FHWA and USDOT and was subsequently approved. It has been implemented with all USDOT recipients in the State of Arkansas operating in accordance with its terms. Interested applicants apply for DBE certification only once in order to be determined eligible to participate as a DBE with any USDOT recipient in the state.
- b. Arkansas Department of Transportation, Clinton National Airport, and the Arkansas Airport Operators Association were designated as Primary Partners within the UCP and will oversee implementation of the UCP. Each Primary Partner will designate a representative.
- c. The UCP agreement provides for the establishment of the Program meeting all the requirements of this section. The agreement specified that:
  - The Program will follow all certification procedures and standards of this part, on the same basis as the State;
  - The Program shall cooperate fully with oversight, review and monitoring activities of USDOT and its operating administrations; and

- The Program shall implement USDOT directives and guidance concerning certification matters.
- d. The Program shall make all certifications on behalf of USDOT recipients in Arkansas with respect to participation in the USDOT DBE Program.
- Certification decisions by the Program shall be binding on all USDOT recipients within Arkansas.
  - The Program shall provide "one-stop shopping" to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in Arkansas.
  - All obligations of recipients with respect to Certification and non-discrimination must be carried out by the Program.
- e. A DBE firm must be fully, finally and currently certified before the due date for bids or offers on an Invitation to Bid or Request for Proposal on which a firm seeks to participate as a DBE.
- f. The PROGRAM is not required to process an application for Certification from a firm having its principal place of business outside Arkansas in the firm is not certified by the UCP in the state in which it maintains its principal place of residence. The "home state" shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.
- g. Subject to USDOT approval as provided in this section, the recipients in two or more state may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or USDOT recipient.
- h. The State may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. The State may also grant reciprocity to other recipient's certification decisions.

*Ref 49 CFR Part 26.81*

## Section 2 - Certification Application and Procedures

- a. The purpose of certification is to ensure that only small businesses independently owned and controlled in both substance and form by one or more socially and economically disadvantaged persons participate in the Program. These businesses must meet all standards and eligibility requirements as set forth in 49 CFR 26.
- b. The Program Certification Committee is responsible for determining and certifying eligibility of businesses seeking to participate as DBEs on DOT- assisted transportation related projects.
- c. ORT will take all the following steps in determining whether a DBE firm meets the standards of 49 CFR Part 26:

- Perform an on-site visit to the firm's principal place of business. The State will interview the principal officers and review their resumes and/or work histories. The State will interview key personnel of the firm if necessary. The State will also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in the jurisdiction or local area. The State will rely upon the site visit report of any other recipient with respect to a firm applying for certification.
- Analyze documentation related to the legal structure, ownership, and control of the application firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing.
- Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;
- Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;
- Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE Program and its preferred locations for performing the work, if any.
- Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE Program;
- Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the disadvantaged owners for the last 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.
- Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in 49 CFR Part 26.85.
- An annual affidavit, sworn to by the firm's owners and executed under penalty of perjury, affirming there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements or any material changes in information provided in the UCA originally submitted, except for changes of which the State has been notified. In addition, the firm must submit the most recent year federal income taxes to confirm business size and a copy of the firm's home state DOT's certification. Additional information could be requested, that is determined on a case-by-case basis.
- Every three years, along with the information stated above, the socially and economically disadvantaged individual(s) must submit a personal net worth statement along with supporting documentation. Then an on-site review will be conducted at that time.

- Review by the Certification Committee of information submitted by the applicant, the on-site review, and a report prepared by the DBE staff.
- d. The certification application package is provided to any business seeking recognition as a DBE. The State will use the application provided in Appendix 4 to this part without change or revision. The State will make sure the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States. The State will review all information on the form prior to making a decision about the eligibility of the firm. The State may request clarification of information contained in the application at any time in the application process. The State will prohibit the release of personal financial information associated with determining net worth and related certification eligibility issues.
- e. When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information the State has obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), the State will promptly make the information available to the other recipient.
- f. The State will not charge a fee to apply for Program DBE certification.
- g. The Certification Committee meets regularly, generally monthly, to examine and evaluate pending applications for certification. From information provided by the applicant and an on-site review, the Committee determines if the business meets the following criteria:
- Is a small business as defined in Small Business Administration regulations (13 CFR 121) and does not exceed the cap on average annual gross receipts of \$23.98 million.
  - Is at least 51 percent owned and controlled by one or more socially and economically disadvantaged individuals as defined by 49 CFR 26.5.
  - Is a for-profit small business.
  - If the management and daily business operations controlled by one or more of the socially and economically disadvantaged owners.
- h. Guidelines for use in making the listed determinations are included in 49 CFR 26.
- i. The Certification Committee reviews each applicant's file and determines if the business is to be approved, denied or deferred.
- If approved, the business is added to the Program DBE Directory of certified businesses.
  - If denied, the Certification Committee will document the reasons. The Certification Committee will notify the applicant in writing of the decision.

- If deferred, the Certification Committee requests additional information before making a determination, or if the applicant has not responded to a request for information, the file is placed in pending status for six months.
  - Decisions on eligibility will be made within 90 days of receiving the required information. The State may extend this time period once, for no more than an additional 60 days, upon written notice to the firm, explaining fully and specifically the reasons for the extension.
- j. Approximately four weeks prior to each letting, the DBE Program Specialist compiles and issues an updated list of certified DBEs that includes name, address, telephone number, contact person and types of work each business is certified to perform.
  - k. Once the State has certified a DBE, it shall remain certified until and unless the Certification Committee has removed its certification, in whole or in part, through the procedures of 49 CFR Part 26.87, except as provided in 49 CFR Part 26.67(b)(1).
  - l. The DBE must certify annually by submitting an affidavit stating no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of 49 CFR 26 or any material changes in the information provided in its application, except for changes about which the firm has notified the State previously, have occurred. If the DBE is based outside Arkansas, a copy of the home state DOT's certification must be submitted. If no changes in ownership have occurred, the average gross receipts for the most recent three years and owner's personal net worth are within the required limits and no eligibility issues are raised, the DBE's certification remains in effect.
  - m. DBE firms must inform the Department, in writing, within 30 days of any change in circumstances affecting the firm's ability to meet size, disadvantaged status, ownership, or control requirements or of any material change in the information provided in the firm's application. The notification must be in the form of a sworn affidavit and include supporting documentation describing in detail the nature of such changes. The Certification Committee will review the information and the applicant's file and make a determination of eligibility.
  - n. Every three years, on or near the firm's anniversary date, an on-site review will be scheduled to determine if the firm should continue to be certified as a DBE. The Certification Committee reviews the firm's annual affidavit information, on-site review and makes a determination regarding the firm's continued eligibility.
  - o. Should a business fail to submit its annual affidavit information by the anniversary date, procedures will be initiated to remove the firm's eligibility as a DBE. To ensure uninterrupted certification, a DBE's annual affidavit information should be received no later than its anniversary date.
  - p. As a recipient, the State must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

- q. Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before the State has issued a decision on the application, the applicant can resubmit the application at any time. The State will not apply the waiting period provided under 49 CFR Part 26.86(c) before allowing the applicant to resubmit its application. However, the State may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. The State may also apply the waiting period provided under 49 CFR Part 26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before the Certification Committee makes a decision.

*Ref 49 CFR Part 26.83*

### Section 3 - Interstate Certification

Effective immediately, this section shall apply to any out-of-state firm requesting DBE certification with the Program.

- a. An out-of-state firm seeking Program certification must be currently certified as a DBE under 49 CFR Part 26.61, Subpart D, by their home state.
- b. The applicant firm must provide the following information to ORT:
  - 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;
  - 11. 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);
  - 111. Any appeals filed with USDOT, to include the applicant firm's letter of appeal and USDOT's response;
  - iv. 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.
- c. Once all the information required from the applicant firm is received, the State will take the following actions:
  - i. 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;
  - ii. Determine whether there is good cause to believe that the home state's certification of the firm is erroneous or should not apply to the PROGRAM. Reasons for making such a determination may include:

1. Evidence that the home state's certification was obtained by fraud;
  2. New information, not available to the home state at the time of its certification, showing that the firm does not meet all eligibility criteria;
  3. The home state's certification was factually erroneous or was inconsistent with the requirements of 49 CFR Part 26;
  4. That Arkansas's State law requires a result different than that of the State law of the home state;
  5. That the information provided by the applicant firm did not meet the requirements as provided above.
- d. Unless the State determines there is good cause to believe the home state's certification is erroneous or should not apply to the Program, the State shall, no later than 60 days from the date on which the Program 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.
- e. If ORT determines the home state's certification is erroneous, the State will, no later than 60 days from the date on which the State received from the firm all information required, send a notice stating the reasons for this determination.
- f. 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 Certification Committee. If the firm requests a meeting, the State will schedule a meeting to take place within 30 days of receiving the request.
- g. The firm bears the burden of demonstrating, by a preponderance of the evidence, that it meets the requirements of 49 CPR Part 26 with respect to the specific issues identified by the PROGRAM.
- h. ORT will issue a written decision within 30 days of receipt of the written appeal or meeting. A decision made by ORT may be appealed to the U.S. DOT under 49 CPR 26.89.

*Ref 49 CFR Part 26.85*

#### Section 4 - Denials of initial Requests for Certification

- a. If it is determined that a firm requesting initial Certification is not eligible, the firm will be given written notice that the Certification Committee has found the firm ineligible, setting forth the reasons for the determination, including specific references to the evidence in the record upon which each reason is based and citing the appropriate references in 49 CPR 26.
- b. In any notice of a finding of ineligibility, the firm will be given an opportunity for an informal hearing before the Certification Committee. At this hearing, the firm may respond in person to the reasons for the finding and provide information and arguments concerning why it should be considered eligible. This hearing will be tape-recorded, and a transcript



or copy of the recording will be made available upon request to the firm, the Program DBELO, and/or the USDOT in the event of an appeal. The firm may also elect to present information and arguments to the Certification Committee in writing, without having a hearing.

- c. The Certification Committee will allow a firm to postpone a hearing no longer than six months.
  - d. After all the facts have been thoroughly reviewed and considered, the Certification Committee will make a recommendation to the Program DBELO regarding the firm's eligibility.
  - e. Upon receipt of the Certification Committee's recommendation, the Program DBELO will review all available information and will, if necessary, make or direct further investigations. After thorough review and consideration, the Program DBELO will make a determination regarding the firm's eligibility.
- b. The firm will be given written notice of the Program DBELO's decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision.
  - c. In any notice of denial of certification, a time period will be established of no less than 12 months that must elapse before the firm may reapply for certification. The time period for reapplication will begin on the date the notice of denial is received by the firm.
  - d. Any notice of denial will inform the firm of the availability of an appeal to the U.S. DOT under Section 26.89.
  - e. If the firm withdraws their application for any reason prior to the on-site review, the firm will not have a waiting period to reapply for certification.

*Ref 49 CFR Part 26.86*

## Section 5 Removal of DBE Eligibility

- a. Denials of Certification
  - If it is determined that a firm requesting initial certification is not eligible, the firm will be given written notice that the Certification Committee has found the firm ineligible, setting forth the reasons for the determination, including specific references to the evidence in the record upon which each reason is based and citing the appropriate references in 49 CFR 26.
  - In any notice of a finding of ineligibility, the firm will be given an opportunity for an informal hearing before the Certification Committee. At this hearing, the firm may respond in person to the reasons for the finding and provide information and arguments concerning why it should be considered eligible. This hearing will be tape-recorded, and a transcript or copy of the recording will be made available upon request to the firm, the DBELO, and/or the USDOT in the event of an appeal. The firm may also elect to present information and arguments to the Certification Committee in writing, without having a hearing.

- The Certification Committee will allow a firm to postpone a hearing no longer than six months.
- After all the facts have been thoroughly reviewed and considered, the Certification Committee will make a recommendation to the Program DBELO regarding the firm's eligibility.
- Upon receipt of the Certification Committee's recommendation, the DBELO will review all available information and will, if necessary, make or direct further investigations. After thorough review and consideration, the Program DBELO will make a determination regarding the firm's eligibility.
  1. The firm will be given written notice of the Program DBELO's decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision.
  2. In the event of a denial of certification of a firm certified by the U.S. Small Business Administration (SBA), the SBA will be notified in writing of the Program denial, including the reasons for the denial.
  3. In any notice of denial of Certification, a time period will be established of no less than 12 months that must elapse before the firm may reapply for Certification. The time period for reapplication will begin on the date the notice of denial is received by the firm.
  4. Any notice of denial will inform the firm of the availability of an appeal to the U.S. DOT under Section 26.89.
  5. If the firm withdraws their application for any reason prior to the on-site review, the firm will not have a waiting period to reapply for Certification.

b. Removal of Eligibility

- It is the responsibility of the Program Hearing Committee to remove a firm's eligibility, that is, to withdraw recognition and certification of DBE designation upon discovery that the business does not meet eligibility criteria.
- The procedure to remove eligibility may be initiated by any of the following: firm fail to provide its annual affidavit, complaint is received alleging that a currently-certified firm is ineligible; notification is received from the firm of a change in its circumstances; or other information pertaining to Certification eligibility comes to the attention of the State.
- The records are reviewed and, if necessary, a verification review is conducted by the External EEO Coordinator. The External EEO Coordinator's report and findings are forwarded to the Certification Committee for review.
- The Certification Committee will review all available information and will, if necessary,

make or direct further investigations. After thorough review and consideration, the Certification Committee will determine whether or not there is reasonable cause to believe the firm is ineligible.

- If it is determined that such reasonable cause exists, the firm will be given written notice of its intent to remove eligibility setting forth the reasons for the proposed determination, including specific references to the evidence in the record upon which each reason is based and citing the appropriate references in 49 CFR 26. If it is determined that such reasonable cause does not exist, the firm and the complainant (if any) will be notified in writing of this determination and the reasons for it.
- In any notice of reasonable cause to remove eligibility, the firm will be given an opportunity for an informal hearing before the Hearing Committee. This committee is composed of a representative from Legal, Program Management, and Construction who have thorough knowledge and understanding of the DBE Program and certification requirements, but have had no involvement in the subject DBE firm's initial certification or actions leading to or seeking to implement the proposal to remove the firm's eligibility. These individuals will also not be subject to direction from the office or personnel who did take part in the actions leading to or seeking to implement the proposal to remove the firm's eligibility.
- At the hearing, 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. This hearing will be recorded, and a transcript or copy of the recording will be made available upon request to the firm, the Program DBELO, and/or the U.S. DOT in the event of an appeal. The firm may also elect to present information and arguments to the Hearing Committee in writing, without having a hearing.
- After all the facts have been thoroughly reviewed and considered, the Hearing Committee will make a recommendation to the Program DBELO regarding the firm's eligibility.
- Upon receipt of the Hearing Committee's recommendation; the Program DBE Liaison Officer will review all available information and will, if necessary, make or direct further investigations. After thorough review and consideration, the Program DBELO will make a determination regarding the firm's eligibility.
  - 1. The firm will be given written notice of the Program DBELO's decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. Any notice of removal of certification will inform the firm of the consequences of the decision and of the availability of an appeal to the U.S. DOT under 49 CFR Part 26.89. A copy of this notice will also be sent to the complainant (if any). The firm will become ineligible upon issuance of this notice, not before.
  - 2. When a firm has been declared ineligible to participate in the DBE Program, the following actions will be taken:

- The firm's name will be removed from the Program DBE Directory.
- The State's Construction and Programs & Contracts Divisions and the primary partners of the Program will be notified, so that the following provisions of the regulations will be enforced:
  1. When a prime contractor has made a commitment to use the ineligible firm, or when the ineligible firm has been awarded a contract as a prime contractor, but a subcontract or contract has not been executed, the ineligible firm will not count toward the contract goal or overall annual goal. The prime contractor will be directed to meet the contract goal with an eligible DBE firm or demonstrate that it has made a good faith effort to do so.
  2. If a prime contractor has executed a subcontract with the firm before notification of ineligibility, the prime contractor may continue to use the firm and may continue to receive credit towards its DBE goal for the firm's work. In this case, or in a case where a prime contract has been let to a DBE that was later ruled ineligible, the portion of the ineligible firm's performance on the contract remaining after the notice of ineligibility was issued shall not count toward the overall annual goal, but will count toward the contract goal.
  3. Exception: If the firm's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, its participation on that contract will be counted toward the overall and contract goals.

c. Notice Given Federal Authorities of Denial or Removal of Certification

1. The name and address of each business and its principal officials which has been subject to denial or removal of Certification by the State, along with the basis for such action, will be provided to the appropriate federal agencies. This is accomplished by transmitting a copy of the letter advising the applicant of the State's decision.

d. Ineligibility Complaints

- i. Any person may file a written complaint with the State or the Program alleging that a currently certified firm is ineligible and specifying the alleged reasons the firm is ineligible. The State and/or the Program are not required to accept an anonymous complaint or a general allegation that a firm is ineligible.
- ii. The complaint should include any information supporting the assertion that the firm is ineligible and should not continue to be certified. Complainants' identities must be kept confidential at their request. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in closure of the investigation or dismissal of the proceeding or hearing. The complainant's waiver of confidentiality must be in writing.

- iii. The Certification Committee will review the complaint and if additional information is needed, the Committee will request the State's External EEO Coordinator to conduct a review of the firm, including:
    1. a document review of the Certification file;
    2. an on-site interview of the business principals and others with knowledge of the company, including employees;
    3. an inspection of business documents and records to verify or clarify information furnished regarding the applicant's disadvantaged status, business size, ownership, control and independence; and
    4. an inspection of the business' physical plant and job site activities. Project engineers may be contacted to obtain general information about the DBE's method of operating at the project site and to ascertain if the project engineer has concerns or suspects there may be irregularities.
  5. Additional information may be requested from the firm, as deemed necessary.
- A report consisting of the results of the review will be prepared within two weeks of the completion date of the investigation.
  - If, based on the review, the State determines there is reasonable cause to believe the firm is ineligible, procedures for removal of eligibility included in this Chapter, Part 6 will be followed.

*Ref 49 CFR Part 26.87*

## Section 6 Suspension of Certification

- a. The PROGRAM shall immediately suspend a DBE's certification without adhering to the requirements in 49 CFR Part 26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.
- b. The PROGRAM may immediately suspend a DBE's certification without adhering to the requirements in 49 CFR Part 26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by 49 CFR Part 26.83(i) of this Part or fails to timely file an affidavit of no change under 49 CFR Part 26.83G). In determining the adequacy of the evidence to issue a suspension, the PROGRAM shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what interferences can reasonable be drawn as a result.
- c. The concerned operating administration may direct the PROGRAM to take action pursuant to paragraph (a) and (b) of this section if it determines that information available to it is sufficient to warrant immediate suspension.

- d. When a firm is suspended pursuant to paragraph (a) and (b) of this section, the PROGRAM shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.
- e. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under 49 CFR Part 26.87 to determine whether the DBE is eligible to participate in the Program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.
  - f. While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted towards the State's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.
- g. Following the receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the Program, in which case no further action is required. If the DBE believes its eligibility should be reinstated, it must provide the PROGRAM information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the PROGRAM must either lift the suspension and reinstate the firm's certification or commence a decertification action under 49 CFR Part 26.87. If the PROGRAM commences a decertification proceeding, the suspension remains in effect during the proceeding.
- h. The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to USDOT. The failure of the PROGRAM to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to USDOT under 49 CFR Part 26.89, as constructive decertification.

*Ref 49 CFR Part 26.88*

### Section 7 -Appealing Certification Decisions to USDOT

If a firm is denied certification or has its eligibility removed by the PROGRAM, the firm may make an administrative appeal to the DOT. The DBE firm must send a letter to the DOT within 90 days of the date of the PROGRAM final decision, including information and arguments concerning why the decision should be reversed. Pending DOT's decision on the appeal, the PROGRAM decision on the firm's eligibility remains in effect.

Appeals should be sent to the following address:

U.S. Department of Transportation  
Attn: Departmental Office of Civil Rights  
1200 New Jersey Avenue, SE  
Washington, D.C. 20590

**Section 8 - Effect of USDOT Certification Appeal Decisions**

- a. If ORT is a recipient from whose action an appeal under 49 CFR Part 26.89 is taken, the decision is binding. It is not binding on other recipients.
- b. If the PROGRAM is a recipient to which a USDOT determination under 49 CFR Part 26.89 is applicable, the PROGRAM will take the following action:
  1. If USDOT determines that the PROGRAM erroneously certified a firm, the firm's eligibility will be removed upon receipt of the determination, without further proceedings on the PROGRAM part. Effective on the date of receipt of the USDOT's determination, the consequences of a removal of eligibility set forth in 49 CPR Part 26.87(i) take effect.
  - ii. If USDOT determines that the PROGRAM erroneously failed to find reasonable cause to remove the firm's eligibility, the PROGRAM must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed.
  - iii. If USDOT determines that the PROGRAM erroneously declined to certify or remove the eligibility of the firm, the State must certify the firm as of the effective date of receipt of the written notice of USDOT' s determination.
  - 1v. If USDOT determines that the PROGRAM erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, the PROGRAM must take appropriate corrective action as determined by USDOT.
  - v. If USDOT affirms the PROGRAM determination, no further action is necessary.
    1. Where USDOT has upheld the PROGRAM denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom he firm is certified may commence proceeding to remove the firm's eligibility under 49 CPR Part 26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed the State's denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

**OZARK REGIONAL TRANSIT  
DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**

**Chapter VI - Compliance and Enforcement**

Section 1 - Confidentiality, Cooperation, and Intimidation or Retaliation

a. *Availability of records.*

- In responding to requests for information concerning any aspect of the PROGRAM, ORT complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). ORT may make available to the public any information concerning the DBE Program release of which is not prohibited by Federal law.
- Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, you must transmit this information to DOT/FTA in any certification appeal proceeding under §26.89 of this part or to any other state to which the individual's firm has applied for certification under §26.85 of this part.

b. *Confidentiality of information on complainants.* Notwithstanding the provisions of paragraph (a) of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the closure of the investigation or dismissal of the proceeding or hearing. ORT follows the procedures of 14 CFR part 16 with respect to confidentiality of information in complaints.

c. *Cooperation.* All participants in the PROGRAM (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with DOT/FTA and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

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

*Ref 49 CFR Part 26.109*



**APPENDIX A**  
**OZARK REGIONAL TRANSIT**  
**DISADVANTAGED BUSINESS ENTERPRISE PROGRAM**  
**POLICY STATEMENT**

It is the policy of Ozark Regional Transit to ensure nondiscrimination on the basis of race, color, age, disability, national origin, and sex in the award and administration of contracts in ORT's programs. In support of this policy, ORT encourages and assists those businesses owned and controlled by socially and economically disadvantaged individuals as determined in accordance with Title 49, Code of Federal Regulations, Part 26.

ORT has developed and implemented a Disadvantaged Business Enterprise (DBE) program to comply with 49 CFR 26, and requires contractors and other parties to contracts and agreements let and/or administered by ORT to abide and perform by this policy and program.

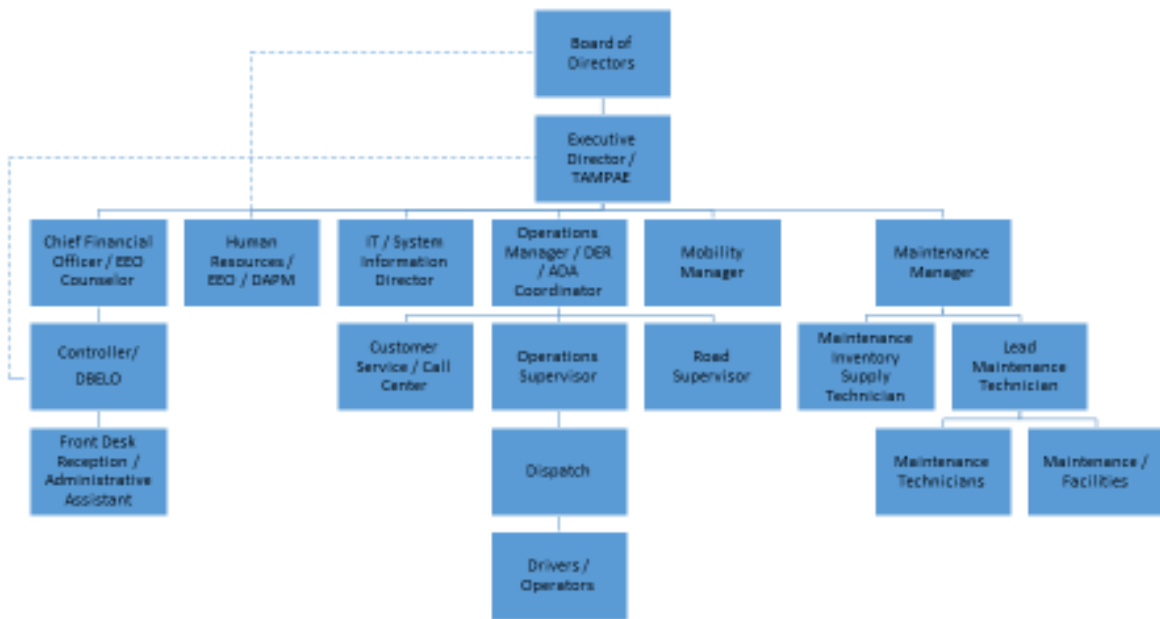
As Executive Director, I support this policy and the program and procedures developed to achieve its objectives, which are:

- To ensure nondiscrimination in the award and administration of FTA-assisted contracts in ORT's financial assistance programs;
- To create a level playing field on which DBEs can compete fairly for FTA-assisted contracts;
- To ensure ORT's DBE program is narrowly-tailored in accordance with 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 of DBEs in FTA-assisted contracts. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by ORT;
- To assist the development of firms that can compete successfully in the marketplace outside the DBE program.

The Executive Director and Chief Financial Officer and/or his/her designee are charged with the responsibility of developing, implementing and maintaining surveillance over the ORT's DBE Program and monitoring and maintaining any and all significant developments, changes or problems occurring in the program.

Joel Gardner  
Executive Director  
Ozark Regional Transit

# Ozark Regional Transit Organizational Chart



APPENDIX C  
DEFINITION OF TERMS

- Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.
- Except as otherwise provided in 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
  - A third party or parties controls or has the power to control both; 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.
- Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom
  - Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.
  - Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, et seq.),
- Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.
- Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes, the use of American products, materials, or labor,
- Compliance means that a recipient has correctly implemented the requirements of this part.
- Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant, legal claims and judgments, and provisions for federal income tax.
- Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.
- Contractor means one who participates, through a contract or subcontract (at any tier), in a FTA-assisted program.
- Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.
- Department - the Arkansas State Highway and Transportation Department (Department) as constituted under the laws of the State of Arkansas for the administration of highway and transportation work.

- 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.
- FTA-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with FTA financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.
- FAA - Federal Aviation Association
- FHWA - Federal Highway Administration
- FTA - Federal Transit Administration
- Good faith efforts means efforts to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to fulfill the program requirement.
- Home state means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business,
- Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.
- Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of "tribally-owned concern" in this section,
- Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.
- Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.
- Native Hawaiian means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.
- Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.
- Noncompliance means that a recipient has not correctly implemented the requirements of this part.
- Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.
- ORT means Ozark Regional Transit

- Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth does not include: The individual's ownership interest in an applicant or participating DBE firm; or the individual's equity in his or her primary place of residence. An individual's personal net worth includes only his or her own share of assets held jointly or as community property with the individual's spouse.
- Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual-United States, which is available on the Internet at the U.S, Census Bureau Web site: <http://www.census.gov/eos/www/naics/>
- Primary Recipient means a recipient which receives FTA financial assistance and passes some or all of it on to another recipient.
- Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and houses the business records are kept are in different locations, the recipient will determine the principal place of business.
- Program means any undertaking on a recipient's part to use FTA financial assistance, authorized by the laws to which this part applies.
- Race-conscious measure or program is one that is focused specifically on assisting only DBEs, including women-owned DBEs,
- Race-neutral measure or program is one that is, or can be, used to assist all small businesses. For the purposes of this part, race-neutral includes gender-neutrality.
- Recipient is any entity, public or private, to which FTA financial assistance is extended, whether directly or through another recipient, through the programs of the FAA, FHWA, or FTA, or who has applied for such assistance,
- Secretary means the Secretary of Transportation or his/her designee,
- Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.
- Small Business Administration or SBA means the United States Small Business Administration.
- SBA certified firm refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a)BD or SDB programs,
- Small business concern means, with respect to firms seeking to participate as DBEs in FTA-assisted contracts, a small business concern as defined pursuant to Section 3 of the Small Business Act and Small Business Administration regulations implementing it (13 CFR part 121) that also does not exceed the cap on average annual gross receipts specified in §26.65(b).
- Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.
- Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- Any individual in the following groups, members of which are presumed to be socially and economically disadvantaged:
  - "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

- "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
- "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
- "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Mariana Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- Women;
- Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- ***Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.***
- Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.
- Transit Vehicle Manufacturer, or TVM, means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.
- Totally-owned concern means any concern at least 51 percent owned by an Indian tribe as defined in this section.
- USDOT or DOT- United States Department of Transportation
- Woman Business Enterprise (WBE) - a small business defined pursuant to Section 3 of the Small Business Act and:
  - Which is at least 51 percent owned by one or more women, or, in the case of a corporation, at least 51 percent of the stock of which is owned by one or more women; and whose management and daily business operations are controlled by one or more of the women who own it. This separate designation is used for reporting purposes to the FHWA and the FTA.

## APPENDIX D

The State of Arkansas Unified DBE Certification Application may be accessed at:

<https://www.arkansashighways.com/dbe/DBE%20Uniform%20Certification%20Application2.pdf>





**ARKANSAS  
UNIFIED DBE CERTIFICATION PROGRAM  
ANNUAL AFFIDAVIT**

FIRM NAME: \_\_\_\_\_

OWNER'S NAME: \_\_\_\_\_

MAILING ADDRESS: \_\_\_\_\_

PHYSICAL ADDRESS: \_\_\_\_\_

TELEPHONE NUMBER: \_\_\_\_\_ FAX NUMBER: \_\_\_\_\_

CELL PHONE NUMBER: \_\_\_\_\_ E-MAIL: \_\_\_\_\_

1) GROSS RECEIPTS FOR PREVIOUS YEAR (2015) \_\_\_\_\_  
NOTE: If Gross Receipts for 2015 are not available, please provide Gross Receipts for 2014.

- a) Include any affiliated firms that are owned and controlled by the owners of the DBE firm (identify firms and respective gross receipts).
- b) An entire copy of the most recent year's federal income tax returns for this firm and affiliates must be provided.
- c) An entire copy of the most recent year's individual income tax returns (Form 1040) must be provided.

2) NUMBER EMPLOYED BY THE FIRM CURRENTLY \_\_\_\_\_

3) COMPLETE THE ENCLOSED PERSONAL NET WORTH STATEMENT (PNWS).

- a) Bank Statement(s) for both checking and/or savings accounts, Mortgage Statement(s), and IRA Statement(s) that include the name of the bank(s), name of account holder(s), and account balance(s) as stated on the PNWS must be provided.

4) PLEASE EXPLAIN ANY CHANGES WHICH MAY HAVE OCCURRED REGARDING THE FIRM'S OWNERSHIP, CONTROL, SIZE OR DISADVANTAGED STATUS:

(Supportive evidence must be provided to document any changes)

\_\_\_\_\_  
\_\_\_\_\_  
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\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
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APPENDIX F  
STATE OF ARKANSAS BUSINESS DEVELOPMENT PROGRAM

Introducing the Business Development Program and Guidelines

The U.S. Department of Transportation's Office of Inspector General (OIG) issued a report on its audit of the Disadvantaged Business Enterprise (DBE) program in April 2013. The findings of the OIG report include:

- 1) the U.S. Department of Transportation (USDOT) has limited success in achieving its program objective to develop DBEs to succeed in the marketplace; and
- 2) a small percentage of certified DBEs across the country actually obtain work on federally-assisted contracts.

After the report was issued, the Federal Highway Administration (FHWA) Headquarters Office of Civil Rights (HCR), together with FHWA executive leadership, met with DBE program stakeholders for input on how to increase the participation rate of DBEs that actually receive prime and subcontracts.

As a result the Department of Transportation believes that an effective strategy to increase the number of DBEs working on federally-assisted contracts is to improve the competency and business capacity of the pool of certified firms nationwide.

To further this objective, HCR is now requiring that every State DOT create a Business Development Program (BDP). The purpose of BDPs is to evaluate and provide a structured process for DBEs to receive firm-specific training and guidance to be competitive within the heavy highway or other construction marketplace. The parameters of a BDP are set out in detail in 49 CFR Part 26, Appendix C. Highlights of the information in this Appendix include:

- Each DBE participating in the program is subject to a program term that should consist of a developmental stage and a transitional stage. The developmental stage is designed to provide assistance for the DBE to access relevant markets and strengthen its financial and managerial skills. The transitional stage is designed to assist participants to prepare for leaving the Business Development Program that demonstrates improved capability and capacity in construction.
- The DBE that participates in the Business Development Program must develop and submit a comprehensive business plan that contains an analysis of their market potential; an analysis of their strengths and weaknesses in the areas of financial, managerial, technical, or labor conditions; and specific target objectives and goals over a period of two years.
- Ideal candidates would be underutilized DBEs with the potential to achieve success on federally-assisted highway contracts.
- The goal is for the DBE/SSP Business Development Program to help ensure DBEs truly become more effective and successful business enterprises.

What can you expect from the Arkansas DBE/SSP Business Development Program?

The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from the Arkansas DBE/SSP.

- (A) Each firm that participates in an Arkansas DBE/SSP's business development program (BDP) program is subject to a program term determined by the Arkansas DBE/SSP. The term should consist of two stages; a developmental stage and a transitional stage.
- (B) In order for a firm to remain eligible for program participation, DBE must maintain DBE certification and meet time line deliverables as outlined in the Business Development Plan that is based on DBE/Contractor assessment that identifies firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts
- (C) By no later than 6 months of program entry, the participant should develop and submit to the Arkansas DBE/SSP a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the Arkansas DBE/SSP. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program,
- (D) The business plan should contain at least the following:
  - (1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the Arkansas DBE/SSP Business Development Program
  - (2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.
  - (3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted
  - (4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and
  - (5) Such other information as the Arkansas DBE/SSP may require.
- (E) Each participant should bi- annually review it's currently approved business plan with the Arkansas DBE/SSP and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the Arkansas DBE/SSP approves in writing a modified plan. The Arkansas DBE/SSP should establish an annual anniversary date for review of the participant's business plan and contract forecasts.
- (F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted.

(G) Program participation is divided into two stages;

- (1) a developmental stage and
- (2) a transitional stage.

The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the Arkansas DBE/SSP Business Development Program.

(H) The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program.

(J) When a participant is recognized as successfully completing the Arkansas DBE/SSP Business Development Program by substantially achieving the targets, objectives and goals set forth in its program term, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the Arkansas DBE/SSP.

(K) In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the Arkansas DBE/SSP:

- (1) Profitability;
- (2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
- (3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
- (4) Ability to obtain bonding;
- (5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
- (6) Good management capacity and capability.

(L) Upon determination by the Arkansas DBE/SSP that the participant should be graduated from the developmental program, the Arkansas DBE/SSP should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program

graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

- (M) Participation of a DBE firm in the program may be discontinued by the Arkansas DBE/SSP prior to expiration of the firm's program term for good cause due to the failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of inadequate performance or unjustified delinquent performance. Also, the Arkansas DBE/SSP can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The Arkansas DBE/SSP should take such action if over a 2-year period a DBE firm exhibits such a pattern.

<b>DBE/SSP Business Development Courses</b>	
<b>CONSTRUCTION</b>	
1	Basic Plans & Specifications
2	Advances Plans & Specifications
3	General Estimating I Bidding
4	Item Specific Bidding and Estimating
5	Work Zone I Traffic Safely Training
6	Construction Survey & Field Engineering Layout
<b>MANAGEMENT</b>	
7	Developing a Business Plan
8	Developing Safety Programs & Policies
9	Understanding Arkansas Contract Law
10	Introduction to Construction Software
11	Meeting Occupational Safety & Control (OSHA) 10 hour Course
12	General Construction Law/ A Contractors overview
13	Contractors Licensing Preparation/ Advanced
14	Constructors Licensing Preparation / Intermediate
15	General Construction Management
	Understanding Surely Bonding
16	Understanding Quality Control & Its Importance In Construction
17	Why Contractors Fail
<b>FIANANCES</b>	
18	Tips for Improving Your Credit
19	Basic Principals of Financial Management
20	QuickBooks - Basic & Intermediate
21	QuickBooks - Basic & Advanced
22	Securing Your Company a Line of Credit with a Bank
23	Securing Your Company a Line of credit with Suppliers
24	Getting Your Company Bonded
<b>MARKETING</b>	
25	Contractors Marketing

## APPENDIX G CONTRACT SANCTIONS

### TITLE VI CONTRACT PROVISIONS

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

- (1) **Compliance with Regulations:** The contractor shall comply with the Regulations relative to Title VI (Nondiscrimination in Federally-assisted programs of the Department of Transportation and its operating elements, especially Title 49, Code of Federal Regulations, Part 21 and 23 Code of Federal Regulations, as amended, and hereinafter referred to as the Regulations). These regulations are herein incorporated by reference and made a part of this contract. Title VI provides that the recipients of Federal financial assistance will maintain and implement a policy of nondiscrimination in which no person in the state of Arkansas shall, on the basis of race, color, national origin, sex, age, disability, be excluded from participation in, denied the benefits of, or subject to discrimination under any program or activity by recipients of Federal financial assistance or their assignees and successors in interest.
- (2) **Nondiscrimination:** The contractor, with regard to the work performed by it during the contract, shall not discriminate on the grounds of race, color, national origin, sex, age, disability, in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor shall not participate either directly or indirectly in the discrimination prohibited by section 21.5 of the Regulations, including employment practices when the contract covers a program set forth in Appendix B of the USDOT Regulations.
- (3) **Solicitations for Subcontracts, Including Procurements of Materials and Equipment:** In all solicitations either by competitive bidding or negotiation made by the contractor or work to be performed under a subcontract, including procurements of materials or leases of equipment, each potential subcontractor or supplier shall be notified by the contractor of the contractor's obligations under this contract and the Regulations relative to nondiscrimination on the grounds of race, color, national origin, sex, age, or disability.
- (4) **Information and Reports:** The contractor shall provide all information and reports required by the Regulations, or directives issued pursuant thereto, and shall permit access to its books, records, accounts, other sources of information, and its facilities as may be determined by the Arkansas Department of Transportation or the U. S. Department of Transportation and its Affiliated Modes to be pertinent to ascertain compliance with such, Regulations or directives. Where any information required of a contractor is in the exclusive possession of another who fails or refuses to furnish this information, the contractor shall so certify to the Arkansas Department of Transportation, or the U. S. Department of Transportation and its Affiliated Modes as appropriate, and shall set forth what efforts it has made to obtain the information.
- (5) **Sanctions for Noncompliance:** In the event of the contractor's noncompliance with the nondiscrimination provisions of this contract, the Arkansas Department of Transportation shall impose such contract sanctions as it or the U. S. Department of Transportation and its Affiliated Modes may determine to be appropriate, including, but not limited to:
  - (a) Withholding of payments to the contractor under the contract until the contractor complies, and/or
  - (b) Cancellation, termination or suspension of the contract, in whole or in part.

(6) **Incorporation of Provisions:** The contractor shall include the provisions of paragraphs (I) through (6) in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Regulations, or directives issued pursuant thereto. The contractor shall take such action with respect to any subcontract or procurement as the Arkansas Department of Transportation or the U. S. Department of Transportation and its Affiliated Modes may direct as a means of enforcing such provisions including sanctions for non-compliance: Provided, however, that, in the event a contractor becomes involved in, or is threatened with, litigation with a subcontractor or supplier as a result of such direction, the contractor may request the Arkansas Department of Transportation to enter into such litigation to protect the interests of the State, and, litigation to protect the interest of the United States.

