



OKLAHOMA Transportation

DBE Manual

A handwritten signature in blue ink, appearing to read "Timothy J. Gatz", positioned above a horizontal line.

Timothy J. Gatz, Director OK Transportation

12/28/2023

Effective Date

Subpart A – General
49 CFR Part 26.1

Policy Statement and Objectives

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

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

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

(Attachment A)

Condition of Federal Funding

ODOT receives federal financial assistance from USDOT through programs of the Federal Highway Administration (FHWA) and Federal Transit Administration (FTA). Therefore, the ODOT becomes a recipient of federal funds, is responsible for administering its DBE program, and is legally accountable for expenditures of USDOT financial assistance in accordance with federal requirements.

As a condition of receiving this assistance, the ODOT has signed an assurance that it will comply with 49 CFR Part 26 in the establishment and administration of a DBE program. Prime contractors, subcontractors, suppliers, manufacturers, and consultants all become sub-recipients of USDOT federal funds when they enter into federally assisted contracts, subcontracts, and agreements with the ODOT.

As sub-recipients of federal funds, the ODOT requires sub-recipients to comply with the requirements of 49 CFR Part 26, the ODOT DBE Program Manual, Guidelines for the Administration of Consultant Contracts, and DBE contract provisions.

As sub-recipients of federal funds, and as a condition of contract award, prime contractors, subcontractors, suppliers, manufacturers, and consultants must affirm that they will carry out DBE obligations and will work with the ODOT and the federal governments in their review of its activities under the contract.

Regulations and Provisions

The following is a list of the DBE contract regulations and provisions that contractors and consultants must comply with on federally funded projects and programs:

- [USDOT DBE regulations 49 CFR Part 26](#)
- [ODOT DBE Program Manual](#)
- [Construction Manual](#)
- [ODOT Standard Specifications Book \(2019\)](#)
- [Contract Special Provisions](#)
 - [Disadvantaged Business Enterprise Programs CX00210B](#)
 - [Special Provisions for Subcontracts 103-3\(a\)09](#)
- [Guidelines for the Administration of Consultant Contracts](#)
- [Title VI Assurances \(**Attachment B**\)](#)
- [FTA Circulars](#)

Other resources such as manuals, reference documents, design standards, and information related to projects/contracts on preconstruction and construction are available at the following:

Preconstruction

- [Consultant Contract Information](#)

Construction

- [Contracts & Proposals](#)
- [Construction Engineering – Standards, Specifications, Materials and Testing](#)

Acronyms and Descriptions

Acronym	Description
ACDBE	Airport Concession Disadvantaged Business Enterprise
ANC	Alaska Native Corporations
CCD	Contract Compliance Division
CFR	Code of Federal Regulations
CRCC	Civil Rights Certification and Compliance System
CUF	Commercially Useful Function
DBE	Disadvantaged Business Enterprise
DBELO	DBE Liaison Officer
DOCR	Departmental Office of Civil Rights
EEO	Equal Employment Opportunity
FAA	Federal Aviation Administration
FHWA	Federal Highway Administration
FTA	Federal Transit Administration
GFE	Good Faith Effort
LOI	Letter of Intent
NAICS	North American Industry Classification System
NCA	No Change Affidavit
OA	Operating Administration (i.e., FHWA, FTA and/or FAA)
ODOT	Oklahoma Department of Transportation
PNW	Personal Net Worth
RE	Resident Engineer
SBA	Small Business Administration
SET	Small Enterprise Training
TOPS	Transportation Online Professional Services
U.S.C.	United States Code
UCP	Unified Certification Program
USDOT	United States Department of Transportation

49 CFR Part 26.11

Record Keeping

- a. ODOT will submit the Uniform Report of DBE Awards or Commitments and Payments to the FHWA and FTA at the intervals stated on the form.
- b. The prime shall keep such records as required by ODOT and as necessary, including all records set forth in this manual, to demonstrate compliance with its DBE utilization obligations.
- c. ODOT will continue to provide data about the DBE program to the USDOT and will provide USDOT updates of any significant changes in ODOT's DBE Program as directed by the applicable USDOT Operating Administration (OA).
- d. As requested, the prime will submit all subcontracts/agreements and other financial transaction documentation executed with DBEs in such form, manner, and content as prescribed by ODOT.
- e. All such records must be retained by the prime for the applicable record retention period in the ODOT's financial assistance agreement or at least three (3) years after project acceptance by FHWA following the completion of the contract, whichever is longer.
- f. ODOT will continue to maintain a bidders list to provide data as accurate as possible about DBE and non-DBE contractors and subcontractors that seek to work on ODOT's federally assisted contracts to help in setting its overall goals. ODOT will collect the following information:
 - a. Firm name;
 - b. Firm address;
 - c. Firm's status as a DBE or non-DBE;
 - d. Age of firm; and
 - e. Annual gross receipts
- g. ODOT will report to the USDOT the percentage and location in the state of certified DBE firms in the Unified Certification Program (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.

49 CFR Part 26.13

Assurance Statements

Each financial assistance agreement ODOT signs with a USDOT OA (e.g., FHWA, FTA, and/or Federal Aviation Administration (FAA) or with a sub-recipient must include the following assurance;

“The Oklahoma Department of Transportation (or the recipient) shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. The Oklahoma Department of Transportation shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. ODOT’s DBE program, as required by 49 CFR Part 26 and approved by the FHWA, 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 ODOT of its failure to carry out its approved program, FHWA or the USDOT may impose sanctions as provided for under Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 United States Code (U.S.C.) 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 *et seq.*)”

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

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

Contract Award and Subcontract Execution

In accordance with the ODOT Special Provisions, the prime consultant/contractor must submit a copy of the executed sub-agreement/contract (including purchase orders, hauling agreements, or for material suppliers) for all subcontractors (DBE firms and non-DBE firms) on federal-aid projects. ODOT does not recognize multiple tier agreements/subcontracts, but Contractors and Subcontractors may retain and use the services of Specialized Service Providers in accordance with ODOT Specification [108.01](#).

Preconstruction

All sub-agreements will be required after negotiation but before the prime consultant has been sent a notice to proceed. Any revisions to a sub-agreement must be approved by the Contract Compliance Division (CCD) prior to the sub-consultant performing work.

All sub-agreements are required to include the below list of clauses/requirements. Information and samples are available on [ODOT's CCD webpage](#).

- Consultant Equal Employment Opportunity (EEO) Requirements
- DBE Substitution/Termination/Replacement provisions
- Full description of the contract work that the certified DBE will perform based on its North American Industry Classification System (NAICS) code
- Prompt Payment/Return of Retainage Clause
- Signature of prime consultant and sub-consultant
- Title VI Assurances (Appendices A & E; Appendix B, C & D if applicable)

If a prime consultant does not respond by timely submission of a sub-agreement, ODOT will:

- Not pay for specific work items;
- Withhold progressive estimates in entirety; or
- Impose other severe sanctions as deemed appropriate.

Construction

Submit a copy of all executed subcontracts and/or sub-agreements (including purchase orders, hauling agreements, or material suppliers) with the signed ODOT Contract to the Office Engineer Division. Once the signed Contract is received, submit all subsequent executed subcontracts and/or changes to Constructionsubcontracts@odot.org or the [current submittal method](#). All subcontracts must be reviewed and approved by CCD prior to the subcontractor performing contract work. After approval, CCD will notify the prime, ODOT's Construction Division, and the RE in order for the prime contractor to process the subcontract request in SiteXchange or the current method.

All subcontracts are required to include the following. Information and samples are available on [ODOT's CCD webpage](#).

- DBE Substitution/Termination/Replacement provisions
- FHWA-1273
- Full description of the contract work that the certified DBE will perform based on its NAICS code
- Prompt Payment/Return of Retainage Clause
- Signature(s) of prime contractor and subcontractor
- Title VI Assurances (Appendices A & E)

If a prime contractor does not respond by timely submission of a subcontract, or sub-agreement, ODOT will:

- Not pay for specific work items;
- Withhold progressive estimates in entirety; or
- Impose other severe sanctions as deemed appropriate.

49 CFR Part 26.15

Exemptions and Waivers

ODOT is not currently operating under any exemptions or waivers to the requirements of 49 CFR Part 26.

Subpart B– Administrative Requirements

49 CFR Part 26.21

Policy Statement and Objectives

ODOT has submitted this program to FHWA for approval, which is for all of ODOT's USDOT-assisted programs, provided that ODOT's goals shall be reviewed by the particular OA (i.e., FHWA) that provides funding for its USDOT-assisted contracts. ODOT will not submit regular updates of its DBE programs so long as it remains in compliance. However, ODOT will submit significant changes in the program for approval. ODOT will continue to carry out its program until all funds from USDOT financial assistance have been expended.

49 CFR Part 26.23

Policy Statement

The ODOT has issued a signed Policy Statement and Objectives, which complies with the requirements of 49 CFR Part 26.23. **(Attachment A)**

49 CFR Part 26.25

Administration

The DBE Liaison Officer (DBELO), who will have direct independent access to the ODOT Executive Director concerning DBE program matters, will be responsible for the implementation and administration of the DBE program. The CCD Manager is designated as the DBELO for the ODOT. The DBELO has direct, independent access to the ODOT Director on program matters.

(Attachment C)

Contract Compliance Division

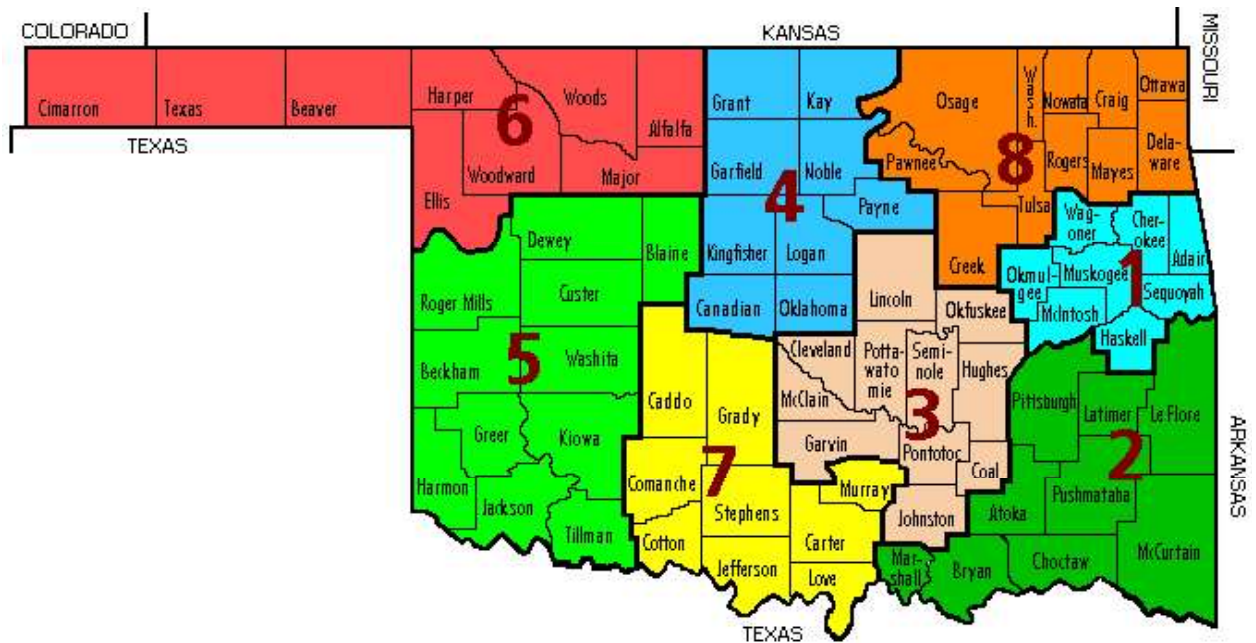
The CCD and staff are responsible for:

- Implementation and oversight of ODOT's DBE Program
- Recommending and establishing policies and procedures in the administration of the DBE program
- Tracking and monitoring the agency's annual DBE goal
- Setting DBE project goals on federal-aid projects, when applicable
- Annual reporting requirements to FHWA and FTA
- Providing training on DBE Program requirements, processes, and procedures
- Providing support and guidance to all field districts and other entities that are recipients of federal funds
- Ensuring prompt payment and return of retainage for all sub-consultants/contractors and sub-recipients
- Contractor Compliance
- Oversight and administration of the Oklahoma UCP

(Attachment D)

ODOT District Map with Counties

The ODOT Field Districts oversee the construction of state highways. The oversight responsibility includes monitoring contractor compliance with the DBE Program requirements.



- District 1 – Muskogee
- District 2 – Antlers
- District 3 – Ada
- District 4 – Perry
- District 5 – Clinton
- District 6 – Buffalo
- District 7 – Duncan
- District 8 – Tulsa
- Division 9 (Central Office) – Oklahoma City

Division Responsibilities

The following divisions work closely with the CCD on implementing the DBE Program.

Construction Division

- Receive and approve all subcontract requests
- Assist on DBE contract issues
- Approve changes to DBE subcontracts after CCD has reviewed and approved
- Generate data reports on DBE participation
- Handle prompt payment complaints that rise to the level of sanctions
- Assist with the relaying of information about the DBE program (changes, trainings, required federal reports, etc.) that impacts field districts and contractors, as requested
- Collaborate with the CCD to ensure all DBE documents are in place, prior to a project closing
- Assists in review and determination of the DBE goal on all federal-aid projects prior to advertisement

Office Engineer Division

- Prepare all construction contracts and ensure all federal requirements, as well as ODOT Special Provisions, are included
- Assists in review and determination of the DBE goal on all federal-aid projects prior to advertisement

Project Management Division

- Prepare all consultant contracts and ensure all federal requirements are attached
- Review all federal-aid projects with the CCD prior to a solicitation to determine opportunities for DBE firms
- Assist on DBE contract issues
- Receive and forward all sub-agreements to the CCD for review and approval
- Handle prompt payment complaints that rise to the level of sanctions
- Receive and route DBE forms that require review and approval
- Assist with the relaying of information about the DBE program (changes, training, required federal reports, etc.) that impacts consultants, as requested

Field District - Resident Engineer (RE)

- Monitor the performance of contractors and DBE firms after a project has been awarded
- Ensure Inspectors perform Commercially Useful Function (CUF) reviews and EEO interviews in the field districts

- Schedule and conduct pre-work conferences and final inspection meetings
- Ensure all DBE requirements are discussed at the prework meetings
- Collect and review payrolls
- Refer prime contractors and subcontractors that have DBE questions/concerns to the CCD
- Review project site bulletin boards
- Document the day-to-day activities on a project
- Assists in the resolution of compliance issues on the project site

Field District - Project Personnel

- Document the day-to-day activities on the project site
- Monitor the work of all contractors and subcontractors
- Assist in the resolution of compliance issues on the project site
- Relay information to the RE when project activities are not in compliance with guidelines and regulations
- Review the project site bulletin boards
- Conduct CUF reviews

49 CFR Part 26.27

DBE Financial Institutions

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

49 CFR Part 26.29

Prompt Payment and Return of Retainage

ODOT has established that, when criteria for payments are met, fifteen (15) calendar days is a reasonable time to make payment or release retainage and requires that payment be made within that time. The fifteen (15) calendar day period for subcontracted work or materials and services provided will commence on the date the consultant/contractor receives payment from ODOT for the work.

In the event a prime consultant/contractor fails to comply with prompt payment requirements or a pattern and practice of prompt payment violations is recognized and all other efforts for remedy have been exhausted, the agency shall invoke administrative actions including, but not limited to, the withholding of solicitations/bid proposals.

ODOT ensures the prompt and full payment of retainage by the Subcontractor requesting a “mini final” to the Residency. This payment is made within 15 days after the subcontractor’s work is deemed satisfactory and complete and ODOT has paid the prime.

Prompt Payment Complaint and Process

1. Formal complaints will be filed with CCD. Complaints will be filed using the ODOT’s appropriate [Prompt Payment Complaint Form](#) (Consultant and/or Construction).

Complaints should be emailed to ODOT-promptpayment@odot.org and/or submitted by mail to:

Oklahoma Department of Transportation
Contract Compliance Division
200 N.E. 21st Street, Room 1-C1
Oklahoma City, OK 73105-3204
Fax: 405-522-2136

2. The Contract Compliance Manager will determine if the complaint is a valid prompt payment complaint.
3. Once the complaint is filed and accepted, ODOT will review it within 45 days.
4. The Contract Compliance Manager will respond by mail and email upon receipt of the complaint and inform the sub-consultant/subcontractor and the prime consultant/contractor that a formal complaint has been received and will be investigated.
5. The Contract Compliance Manager will investigate the complaint and determine the next steps.
6. To ensure compliance with the prompt payment provision, the Contract Compliance Manager may require the prime consultant/contractor to provide payment information to the sub-consultant/subcontractor. Data collected may include copies of canceled checks, invoices, and other correspondence.
7. Once the complaint has been investigated, a letter of findings or the next step will be processed and distributed to each party. If the CCD is unable to resolve the complaint, it will then be transferred to the appropriate Division (Project Management and/or Construction) for further investigation.
8. The appropriate Division will have a target of 20 calendar days to complete its review and determination. If a dispute is determined to exist, the Division will:
 - Advise the sub-consultant/subcontractor it may file against the payment bond
 - Provide the prime consultant/contractor information about the prompt payment complaint and advise responsibility to work with the sub-consultant/subcontractor to resolve the dispute
 - Provide copies of information to the prime consultant/contractor, sub-consultant/contractor, and bonding company
 - Remind the parties that it is their responsibility to resolve the dispute

If no resolution occurs, ODOT will enforce sanctions/administrative remedies against the prime consultant/contractor, such as:

- Suspension of processing all or a portion of progressive estimates
- Refusal to issue proposals
- Refuse to approve subcontractor or material suppliers
- Suspension of work on the project
- Suspension of prequalification
- Contractor performance suspension
- Contractor Debarment
- Contractor in default for breach of Contract
- Other actions deemed appropriate

If either the sub-consultant/subcontractor or the prime consultant/contractor officially initiates any legal action, the complaint will then be referred to the ODOT General Counsel's office and the complaint shall be officially closed by CCD.

49 CFR Part 26.31

DBE Directory

ODOT maintains a real-time directory on the [Civil Rights Certification and Compliance \(CRCC\) system](#). Firms in the [CRCC system](#) are eligible to participate as DBE/ACDBE.

49 CFR Part 26.33

Overconcentration

If ODOT determines that DBE firms are over-concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, ODOT will devise appropriate measures to address this over concentration and obtain the approval of the concerned USDOT OA (i.e., FHWA). ODOT will consider the measures proposed by 49 CFR Part 26.33(b) and obtain the approval of the concerned OA before implementing any measures.

49 CFR Part 26.35

Small Business Participation

ODOT has launched a Small Enterprise Training (SET) Program to facilitate increased participation in construction contracting opportunities by Oklahoma's small businesses.

SET will offer free training to Oklahoma-based companies that meet National Small Business Administration (SBA) size guidelines and are actively pursuing ODOT contracting opportunities.

SET's goal is to assist the ODOT's certified DBEs and other small businesses currently involved in or interested in expanding their operations in the road construction industry. These workshops will help to increase the participants' business expertise and their capacity to acquire and perform contracts both in the public and private sectors. The training program will include technical subjects such as bidding and estimating costs in addition to business skills like networking and using social media as an outreach tool.

Information on the SET Program is available on the [CCD's webpage](#).

49 CFR Part 26.37

Monitoring and Enforcement Mechanisms

ODOT monitors construction work sites, projects, and relevant documentation to ensure that work committed to DBEs at award or subsequently (e.g., as the result of modification to the contract) is actually performed by the DBEs to which the work was committed. ODOT's REs and field personnel, Consultant Engineers, CCD, and Project Management Division monitor prime consultants/contractors and DBEs for DBE participation and Commercial Useful Function (CUF). In administering the project/contract, ODOT personnel and ODOT field inspectors ensure a CUF review is performed on each DBE firm performing work on a federally assisted project/contract.

ODOT requires appropriate information from the monthly payment log to be submitted either manually or electronically on preconstruction and construction federally assisted projects/contracts to monitor and track DBE participation. The monthly payment log or electronic information is submitted by the prime consultant/contractor within 15 days of when payments were made by ODOT or by the 15th of the month if the monthly payment log is utilized. The CCD reviews the forms and compares the information to ODOT's internal software for verification. Whenever prompt payment is not made, ODOT determines the cause and attempts to resolve the problem.

The appropriate DBE Form 3, Final Payment Report, is submitted at the end of a project/contract to ensure the DBE goal and individual DBE commitment amounts are met prior to close. If the DBE goal and/or individual DBE commitments are not met, the CCD will contact the prime consultant/contractor to determine the cause. At times, DBE goals are not met due to an underrun or deletion of quantities by ODOT. The CCD documents all information.

If, during the life of a project/contract, RE personnel or Contract Administrators from the Project Management Division become aware that a DBE goal is not being met, appropriate actions shall be taken by the prime consultant/contractor to fulfill the DBE goal.

49 CFR Part 26.39

Small Business Participation

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

1. Right-of-Way Clearance
2. Landscaping
3. Wetland Creation
4. Environmental Mitigation
5. Transportation Enhancement Projects

ODOT reviews upcoming bidding opportunities and if a project is identified, based on the above criteria, ODOT will advertise the project with the waiver of prequalification.

In addition, under Oklahoma Statute Title 69-1101, "If the project advertised is for the construction of more than eight (8) miles of road, and is not a surface treatment only project, said advertisement shall provide for bids on sections of the road no longer than eight (8) miles, as well as bids on the project as a whole." Moreover, "If the project advertised is a surface treatment only project of more than twenty (20) miles of road, the advertisement shall provide for bids on sections of the road no longer than twenty (20) miles, as well as bids on the project as a whole."

The twenty (20) mile project limit includes:

- Signing
- Striping
- Rumble Strips
- Guardrail
- Cable or Median Barrier
- Dowel Bar Retrofit
- Diamond Grinding
- Concrete Patching or Joint/Crack Seal
- Fog Seal
- Chip Seal
- Slurry Seal, Micro-surfacing, Novachip, or Ralumac
- Asphalt Cement or Portland Cement single life overlays

The eight (8) miles project limit applies to all other projects. The above list of projects is primarily of a specialized nature and is not usually performed by larger general contractors, but by the specialty contractors.

This allows small businesses to bid directly as a prime contractor.

There is not a prequalification process for consultants. Small businesses and DBE firms can submit a Letter of Intent (LOI) for any solicitation.

Subpart C– Goals, Good Faith Efforts and Counting 49 CFR Part 26.41

Role of Statutory 10 percent DBE Goal

ODOT acknowledges that the statutes authorizing the DBE Program provide that, except to the extent the USDOT Secretary determines otherwise, not less than 10 percent of the authorized funds are to be expended with DBEs. This 10 percent goal is an aspirational goal at the national level, which USDOT uses as a tool in evaluating and monitoring DBEs' opportunities to participate in contracts. The national 10 percent goal does not authorize or require ODOT to set overall or contract goals at the 10 percent level or any other particular level or to take any special administrative steps if their goals are above or below 10 percent.

49 CFR Part 26.43

Set-Asides or Quotas

ODOT and its sub-recipients do not use set-asides or quotas in the administration of the DBE Program.

49 CFR Part 26.47

Failure to Meet Overall Goal

ODOT monitors DBE participation toward the overall goal based on awards and commitments. If the awards and commitments reported on the Uniform Report of Awards and Commitments and Payments at the end of any federal fiscal year are less than the overall goal applicable to that federal fiscal year, ODOT will consider factors that include, but are not limited to:

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

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

49 CFR Part 26.51

Setting Overall Goals (*Attachment E*)

ODOT develops its overall agency DBE goal consistent with 49 CFR Part 26.45. The methodology used to develop the overall goal is available to the public electronically on [ODOT's webpage](#). ODOT submits its FHWA and FTA methodologies and goals to the appropriate OA (i.e., FHWA and FTA) as required. Submittal is based upon the staggered three-year goal schedule. The agency DBE goal is based upon and applies to both ODOT's preconstruction and construction projects.

Project Level DBE Goals

The first decision of the contract goal setting process is to decide if having a goal on the project will help ODOT attain the annual DBE Participation Goal. This decision is made for every federally assisted project. If the decision is to assign a DBE participation goal, then the entire goal setting calculations process will be performed. Changing individual pay item participations to modify the goal will not occur. For construction contracts, all work items from the engineer's estimate are included in the goal setting calculations process except those items detailed on the FHWA approved Exempt Work Items list. For non-construction contracts, all work items/tasks are included in the goal-setting calculations process.

For federally assisted projects with goals, ODOT utilizes an in-house application to calculate a DBE Participation Base Goal. Data sources used in the goal calculations are:

- the engineer's estimate
- a table of standardized project pay items identified by category of work
- a table of categories of work for which there is a pool of certified DBEs
- and a table indicating the percentage of DBEs certified to perform each category of work.

As needed, DBE outreach meetings will be held on high visibility or high public interest projects. Information garnered during the outreach meetings will be considered during the DBE participation goal-setting process. ODOT's detailed process of setting project-level DBE goals for construction projects is available in a separate Addendum (***Attachment F***).

Preconstruction projects are reviewed by a team composed of staff from the Contract Compliance Division, Project Management Division, and the Director of Engineering. A DBE goal is established prior to the solicitation, which occurs four times a year, with additional solicitations as needed.

Construction projects are reviewed by a team composed of staff from the Contract Compliance, Construction, and Office Engineer Divisions. Any potential exclusion of the DBE participation goal is discussed, and a final DBE Participation Goal is determined. For contracts over \$40m, the FHWA Division Civil Rights Specialist is invited to participate as a monitor during the DBE goal-setting discussion. For a contract estimated to be \$50 million or greater, the FHWA Division Civil Rights Specialist will participate in the contract DBE goal setting discussion. The final DBE Participation Goal becomes part of the project advertisement documentation.

49 CFR Part 26.53

Good Faith Effort (GFE) Process

When ODOT has established a DBE contract goal, ODOT awards the project/contract only to a consultant/bidder who makes an adequate Good Faith Effort (GFE) to meet or exceed the goal. ODOT determines that a consultant/bidder has made a GFE if the consultant/bidder does either of the following, as per 49 CFR Part 26.53:

1. Documents that it has obtained enough DBE participation to meet the goal; or
2. Documents that it made an adequate GFE by performing all necessary and reasonable steps to meet the goal even though it did not succeed in obtaining enough DBE participation to do so. If the consultant/bidder does document an adequate GFE, ODOT will not deny an award of the project/contract on the basis that the consultant/bidder failed to meet the goal.

Prior to Award

In the solicitations for USDOT-assisted projects/contracts for which a goal has been established, the award of the project/contract will be conditioned on meeting the requirements of this section. All consultants/bidders are required to submit the appropriate DBE Form 6, Confirmation of Intent to Subcontract Federal-Aid Project, at the following time:

Preconstruction

Consultants are required to submit the [DBE Form 6](#) after negotiation.

Construction (Bid Opening)

Bidders must upload the DBE's quote and create a [DBE Form 6](#) at the bid time in Bid-X or the required submittal method. The DBE's quote should include, at a minimum:

- A full description of the contract work that each DBE will perform; and

- Each item description, quantity, price, amount, and total must be mathematically reflected and equal to the total participation amount identified in the bid documents.

The DBE's quote will be the governing amount if the amount entered in BidExpress, the DBE Form 6, and/or the quote amounts are different.

If the project/contract goal cannot be met, evidence of GFE will be submitted on the appropriate DBE Form 5 at the following time:

Preconstruction

Instead of the required DBE statement on letterhead, the [DBE Form 5](#) must be included with the firm's LOI.

Construction- Bid Opening

The [DBE Form 5](#) shall be uploaded into Bid-X.

After Award

If at any time the DBE goal on the project/contract cannot be met, the prime consultant/contractor is required to seek all opportunities (Good Faith Effort) where DBE firms can be utilized. If additional DBE participation is not obtainable, the appropriate DBE Form 5 along with justification and evidence of Good Faith Effort (GFE) is required and must be approved by CCD.

ODOT's Good Faith Effort (GFE) Determination Process

ODOT verifies that all information is complete, accurate and adequately documents the consultant's/bidder's Good Faith Effort (GFE).

As per 49 CFR Part 26, the following is a list of types of actions, which can be considered as part of the consultant's/bidder's GFEs to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive.

- Solicit through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the project/contract. This may include attendance at pre-bid and business match-making meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Request for Proposals, and written notices to all DBEs listed in ODOT's DBE Directory.
- The consultant/bidder should solicit this interest as early in the acquisition process as practicable to allow the DBEs to respond to the solicitation and submit a timely offer for the sub-agreement/subcontract. The consultant/bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.
- Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved.
- Providing interested DBEs with adequate information about the plans, specifications, and requirements of the project/contract in a timely manner.

- Negotiating in good faith with interested DBEs. Incur reasonable additional costs to obtain DBE Participation. **Price alone is not a sufficient reason to reject a DBE.** The consultant/bidder must demonstrate that the cost is excessive and unreasonable. Reasonableness is evaluated not only in terms of the dollar and percentage difference from one bidder to another but also in light of the percentage of the total contract.
- As necessary, revise the DBE participation plan in order to obtain DBE participation. In the event the consultant/bidder is unable to obtain DBE participation under the original plan or is receiving DBE quotes in other areas, it should consider revising the plan, unbundling, and forgoing self-performance or portions of the contract.
- Provide assistance to DBEs. Assistance may include providing the DBE help to understand the technical and contract requirements of the project, obtain bonds and insurance for the project, and connect with others in the industry to obtain supplies, equipment, or other materials for the project. **The bidder should be careful not to compromise the independence or potential Commercial Useful Function (CUF) of the DBE, therefore in no instances should bidders arrange supply purchases, negotiate on behalf of a DBE, lend equipment to DBEs, or directly pay DBE employees.**

Good Faith Efforts (GFEs)

Administrative Reconsideration Process

If ODOT determines that the apparent successful consultant/bidder has failed to meet the requirements, prior to awarding the project/contract, ODOT will provide the consultant/bidder an opportunity for administrative reconsideration.

1. If the ODOT DBELO determines that the consultant/bidder did not demonstrate Good Faith Effort (GFE) to meet the project/contract goal, the DBELO or designee shall notify the consultant/bidder in writing, via the email address provided by the contactor(s) listed in the LOI/Bid-X.
2. The notice shall state that the consultant/bidder is entitled to administrative reconsideration. ODOT's independent administrative reconsideration official is ODOT's General Counsel or designee, provided that such designee did not participate in the original determination. The DBELO shall provide the administrative reconsideration official with a copy of the notice to the consultant/bidder.
3. The consultant/bidder has five business days from the date of the notice from the DBELO to submit a request for administrative reconsideration to the email addresses provided in the notice.
 - a. The request shall include the consultant's/bidder's basis for the appeal and any supporting documentation included at the time of bid that the consultant/bidder would like considered as part of the reconsideration.
 - b. The request shall also include a statement as to whether the consultant/bidder would like a hearing and specify whether the consultant/bidder would like an in-person or a

telephone hearing. If the consultant/bidder does not include a request for a hearing, the right to a hearing is waived.

4. If the consultant/bidder has requested a hearing, the administrative reconsideration official will establish a date and time for the hearing and send written notice via email to the DBELO and consultant/bidder at least two business days in advance of the hearing. If schedules permit, the parties may waive the two-day requirement.

5. The administrative reconsideration official may request additional documentation from the consultant/bidder and/or the DBELO. A copy of all requests and responses shall be provided to the other party and the other party shall be given an opportunity to respond.

6. The administrative reconsideration official shall issue the final determination as to whether the consultant/bidder made GFEs to meet the project/contract goal. The determination of the administrative reconsideration official is not appealable.

Termination/Substitution of a DBE Firm

As per 49 CFR Part 26.53, a prime consultant/contractor cannot terminate and/or substitute a DBE without prior written consent from ODOT's CCD. The prime consultant/contractor is required to utilize the specific DBEs listed to perform the work and supply the material for which each is listed unless the prime consultant/contractor obtains written consent. This includes, but it not limited to, instances in which a prime consultant/contractor seeks to perform work originally designated for a DBE sub-consultant/subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

The CCD will provide written consent if approved, that the prime consultant/contractor has good cause to terminate and/or substitute the DBE firm. Good causes include the following circumstances:

1. The listed DBE sub-consultant/contractor fails or refuses to execute a written contract;
2. The listed DBE sub-consultant/contractor fails or refuses to perform the work of its sub-agreement/subcontract in a way consistent with normal industry standards. Provided however, that good cause does not exist if the failure or refusal of the DBE sub-consultant/contractor to perform its work on the sub-agreement/subcontract results from the bad faith or discriminatory action of the prime consultant/contractor;
3. The listed DBE sub-consultant/contractor fails or refuses to meet the prime consultant/contractor's reasonable, nondiscriminatory bond requirements.
4. The listed DBE sub-consultant/contractor becomes bankrupt, insolvent, or exhibits credit unworthiness;
5. The listed DBE sub-consultant/contractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;

6. ODOT has determined that the listed DBE sub-consultant/contractor is not a responsible sub-consultant/contractor;
7. The listed DBE sub-consultant/contractor voluntarily withdraws from the project and provides to ODOT written notice of its withdrawal;
8. The listed DBE is ineligible to receive DBE credit for the type of work required;
9. A DBE owner dies or becomes disabled with the result that the listed DBE sub-consultant/contractor is unable to complete its work on the project/contract;
10. Other documented good cause that is determined to compel the termination of the DBE sub-consultant/contractor.

Good cause does not exist if the prime consultant/contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime consultant/contractor can self-perform the work. Good cause does not also exist if the prime consultant/contractor substitutes another DBE or non-DBE after contract award.

Before the request to terminate and/or substitute a DBE, the prime consultant/contractor must give the DBE **five days to respond** to the prime consultant's/contractor's notice and reason for the request. The CCD will require the [appropriate DBE Form 4](#), Notification Change of DBE Participant, along with documentation (letter, email, and/or text) for review and approval/denial. All CCD forms are located in the "Business Center" then "Project Support" sections under "ODOT Forms" at www.odot.org.

Unless consent is provided, the prime consultant/contractor will not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

49 CFR Part 26.55

Counting DBE Participation Towards Goals

When a DBE participates in a contract, ODOT only counts the value of the work actually performed by the DBE as indicated through the Commercial Useful Function (CUF) toward DBE goals.

1. The entire amount of the portion of a project/contract that is performed by the DBE's own forces will be credited. Included are the cost of supplies and materials obtained by the DBE for the work of the project/contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE sub-consultant/contractor purchases or leases from the prime consultant/contractor or its affiliate.)
2. ODOT counts the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a USDOT-assisted contract, toward DBE goals, provided the fee is reasonable and not excessive as compared with fees customarily allowed for similar services.

3. When a DBE performs as a participant in a joint venture, ODOT counts a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces.
 - a. ODOT counts expenditures toward DBE goals only if the DBE is performing a CUF on that contract.
 - b. A DBE performs a CUF when it is responsible for execution of the work of the project/contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved.
 - c. To perform a CUF, the DBE must also be responsible, with respect to materials and supplies used on the project/contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself.
 - d. To determine whether a DBE is performing a CUF, ODOT evaluates the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the project/contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work, and other relevant factors. A DBE does not perform a CUF if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, ODOT examines similar transactions, particularly those in which DBEs do not participate. If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own workforce, ODOT presumes that it is not performing a CUF.
4. A DBE trucking company must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals. The DBE must itself own and operate at least one fully licensed, insured, and operational truck used on the contract. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs. ODOT does allow 1 to 1 DBE trucking credit on federally assisted contracts in support of 49 CFR 26.55(d)(5).
5. If the materials or supplies are purchased from a DBE "regular dealer," ODOT counts 60 percent of the cost of the materials or supplies toward DBE participation.
 - a. A "regular dealer" is defined as a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.
 - b. To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

- c. A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business 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.
 - d. Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers.
6. ODOT considers a DBE which is neither a manufacturer nor a regular dealer, to be a broker. If ODOT determines such fees are reasonable, ODOT will count the entire amount of DBE broker fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals. If a firm is acting as a broker, ODOT does not count any portion of the cost of the materials and supplies toward DBE goals.
 7. A DBE firm must be certified in the work to be performed at the time of commitment and contract in order to count toward the DBE goal. When a prime consultant/contractor has made a commitment to using a DBE firm, or ODOT has made a commitment to using a DBE prime consultant/contractor, but a sub-agreement/subcontract has not been executed before the firm is decertified, the ineligible firm cannot count toward the contract goal or overall goal. The prime consultant/contractor must replace the ineligible firm with an eligible DBE firm or demonstrate to ODOT that it has made Good Faith Efforts (GFEs) to do so.

If a prime consultant/contractor has executed a sub-agreement/subcontract with a firm before it is notified of its ineligibility, the prime consultant/contractor may continue to use the firm on the project/contract and may continue to receive credit toward its DBE goal for the firm's work.

Subpart D– DBE Certification Standards
49 CFR Part 26.61

Burdens of Proof

In determining whether to certify a firm as eligible to participate as a DBE, ODOT will apply the standards of 49 CFR Part 26.61.

1. The firm seeking certification has the burden of demonstrating to ODOT, by a preponderance of the evidence, that it meets the requirements of 49 CFR Part 26 concerning group membership or individual disadvantage, business size, ownership, and control.
2. When an individual submits a signed, notarized statement that he or she is a member of one of the groups in 49 CFR Part 26.67(a), ODOT will presume that such individual is socially and economically disadvantaged.
3. ODOT will make determinations concerning whether individuals and firms have met their burden of demonstrating ownership, control, and social and economic disadvantage by considering all the facts in the record, viewed as a whole.

49 CFR Part 26.63

Group Membership Determinations

If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group, ODOT has a well-founded reason to question the individual's claim of membership in that group, ODOT will require the individual to present additional evidence that they are a member of the group.

1. ODOT will provide the individual a written explanation of its reasons for questioning their group membership and a written request for additional evidence. In implementing this section, ODOT will take special care to ensure that it does not impose a disproportionate burden on members of any particular designated group.
2. In determining a group membership classification, ODOT will consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. ODOT may require the applicant to produce appropriate documentation of group membership.
3. If ODOT determines that an applicant claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the applicant will be required to demonstrate social and economic disadvantage on an individual basis. ODOT's decisions concerning membership in a designated group are subject to the certification appeals procedure as set forth in 49 CFR Part 26.89.

49 CFR Part 26.65

Business Size Determinations

To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. ODOT will apply current SBA business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform on federally-assisted contracts. ODOT rebuttably presumes that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA are socially and economically disadvantaged individuals provided that the applicant has submitted a notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

ODOT requires each individual owner of a firm applying to participate as a DBE, whose ownership and control are relied upon for DBE certification, to certify that they have a personal net worth that does not exceed \$1.32 million or the current USDOT defined amount. This certification must be supported with a signed, notarized statement of personal net worth with appropriate supporting documentation.

Where necessary to accurately determine an individual's personal net worth, ODOT may, on a case-by-case basis, require additional financial information from the owner of an applicant firm (e.g., information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). However, such requests for additional information will not be unduly burdensome or intrusive. Notwithstanding any provision of Federal or State law, ODOT will not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter.

ODOT will transmit this information to the 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 interstate certification.

In determining an individual's net worth, ODOT:

- a. Excludes the individual's ownership interest in the applicant firm
- b. Excludes the individual's equity in their primary residence (except any portion of such equity 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. ODOT includes home equity loan balances in the equity calculation and not as a separate liability on the individual's personal net worth form;
- c. Does not use contingent liabilities to reduce an individual's net worth; and
- d. With respect to assets held in vested pension plans, Individual Retirement Accounts, 401(k) accounts, or other retirement savings or investment programs in

which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, includes 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.

Rebuttable Presumption of Disadvantage

An individual's presumption of economic disadvantage may be rebutted if the statement of personal net worth and supporting documentation shows that the individual's personal net worth exceeds \$1.32 million, or approved USDOT defined amount. ODOT is not required to have a proceeding in order to rebut the presumption of economic disadvantage in this case.

An individual's presumption of economic disadvantage may also be rebutted if the statement of personal net worth and supporting documentation demonstrates that the individual is able to accumulate substantial wealth. In making this determination, as a certifying agency, ODOT may consider factors that include, but are not limited to:

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

The exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes. ODOT has a proceeding in order to rebut the presumption of economic disadvantage when the \$1.32 million threshold, or USDOT approved defined amount, has not been met but the individual otherwise demonstrates an ability to accumulate substantial wealth.

If ODOT 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 ODOT may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual.

ODOT's proceeding follows the procedures of 49 CFR Part 26.87. ODOT has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. ODOT may require the individual to produce information relevant to the determination of his or her disadvantage.

When an individual's presumption of social and/or economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility under this subpart unless and until he or she makes an individual showing of social

and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's personal net worth exceeds \$1.32 million, or the current USDOT defined amount, 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 (PNW) remains above that amount.

Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals whose presumed disadvantage has been rebutted) may apply for DBE certification. ODOT will determine on a case-by-case whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to ODOT, by a preponderance of the evidence, that the individuals who own and control it are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, ODOT uses the guidance found in Appendix E of 49 CFR Part 26. ODOT requires that applicants provide sufficient information to permit determinations under the guidance of Appendix E of 49 CFR Part 26.

49 CFR Part 26.69

Ownership Determinations

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

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

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

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

The firm's ownership by socially and economically disadvantaged individuals must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and profits commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements.

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.

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

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

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 the value to the firm.

The individual whose expertise is relied upon must have a significant financial investment in the firm.

ODOT will always deem as held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by a socially and economically disadvantaged individuals:

1. As a result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or
2. Through inheritance, or otherwise because of the death of the former owner

ODOT will presume as not being held by socially and economically disadvantaged individual, for purpose of determining ownership, all interest in a business or other assets obtained by the individuals 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 to ODOT, 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.

ODOT will apply the following rules in situations in which marital assets form a basis for ownership of a firm:

1. When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, ODOT will deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. ODOT does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.
2. A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.

ODOT may consider the following factors in determining the ownership of a firm. However, ODOT will not regard a contribution of capital as failing to be real and substantial or find a firm ineligible, solely because:

1. A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in this section;

2. There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
3. Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, ODOT 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.

49 CFR Part 26.71

Determination of Control

In determining whether socially and economically disadvantaged owners control a firm, ODOT 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 the viability of which does not depend on its relationship with another firm or firms.

1. In determining whether a potential DBE is an independent business, ODOT will scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
2. ODOT will consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.
3. ODOT will examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.
4. In considering factors related to the independence of a potential DBE firm, ODOT will 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, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business

decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR Part 26.69(j)(2).

The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy, and operations.

1. A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
2. In a corporation, disadvantaged owners must control the board of directors.
3. In a partnership, one or more disadvantaged owners must serve as general partners, controlling all partnership decisions.

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

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

If state or local law requires the persons to have a particular license or other credential in order to own and/or control a certain type of firm, then the socially and economically disadvantaged persons who own and control a potential DBE firm of that type must possess the required license or credential. If state or local law does not require such a person to have such a license or credential to own and/or control a firm, ODOT will not deny certification solely on the ground that the person lacks the license or credential. However, ODOT may take into account the

absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.

ODOT may consider differences in remuneration between the socially and economically disadvantaged owners and other participants in the firm in determining whether to certify a firm as a DBE. Such consideration shall be in the context of the duties of the persons involved, normal industry practices, the firm's policy and practice concerning reinvestment of income, and any other explanations for the differences proffered by the firm. ODOT may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

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

In order to be viewed as controlling a firm, a socially and economically disadvantaged owner cannot engage in outside employment or other business interests that conflict with the management of the firm or prevent the individual from devoting sufficient time and attention to the affairs of the firm to control its activities. For example, absentee ownership of a business and part-time work in a full-time firm are not viewed as constituting control. However, an individual could be viewed as controlling a part-time business that operates only on evenings and/or weekends, if the individual controls it all the time it is operating.

A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, ODOT will make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business, without regard to whether or not the other persons are immediate family members.

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

Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm demonstrates to ODOT by clear and convincing evidence, that:

1. The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

2. The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.

In determining whether a firm is controlled by its socially and economically disadvantaged owners, ODOT may consider whether the firm owns the equipment necessary to perform its work. ODOT will not determine that a firm is not controlled by socially and economically disadvantaged individuals solely because the firm leases, rather than owns, such equipment, where leasing equipment is a normal industry practice, and the lease does not involve a relationship with a prime contractor or other party that compromises the independence of the firm.

ODOT will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm needs to demonstrate to ODOT only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. ODOT will not require that the firm be recertified or submit a new application for certification, but will verify the disadvantaged owner's control of the firm in the additional type of work.

1. The types of work a firm can perform (whether on initial certification or when a new type of work is added) must be described in terms of the most specific available NAICS code for that type of work. ODOT may also apply a NAICS descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to USDOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification.
2. Firms and recipients must check carefully to make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work, which ODOT has determined the firm's owners can control. The firm bears the burden of providing detailed company information the certifying agency needs to make an appropriate NAICS code designation.
3. If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that the certifying agency, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.
4. A certifier is not precluded from changing a certification classification or description if there is a factual basis in the record. However, certifiers will not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, ODOT will generally not consider the restraints relating to standardized quality, advertising, accounting format, and other provisions imposed on the franchisee or licensee by the franchise agreement or license, provided that the franchisee or licensee has the right to profit from its efforts and bears the risk of loss commensurate with ownership. Alternatively, even though a franchisee or licensee may not be controlled by virtue of such provisions in the franchise agreement or license, affiliation could arise through other means, such as common management or excessive restrictions on the sale or transfer of the franchise interest or license.

In order for a partnership to be controlled by socially and economically disadvantaged individuals, any non-disadvantaged partners must not have the power, without the specific written concurrence of the socially and economically disadvantaged partner(s), to contractually bind the partnership or subject the partnership to contract or tort liability.

The socially and economically disadvantaged individuals controlling a firm may use an employee leasing company. The use of such a company does not preclude the socially and economically disadvantaged individuals from controlling their firm if they continue to maintain an employer-employee relationship with the leased employees. This includes being responsible for hiring, firing, training, assigning, and otherwise controlling the on-the-job activities of the employees, as well as ultimate responsibility for wage and tax obligations related to the employees.

49 CFR Part 26.73

Other Rules Affecting Certification

Consideration of whether a firm performs a Commercial Useful Function (CUF) or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. ODOT does not consider CUF issues in any way in making decisions about whether to certify a firm as a DBE.

ODOT may consider, in making certification decisions, whether a firm has exhibited a pattern of conduct indicating its involvement in attempts to evade or subvert the intent or requirements of the DBE program.

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

ODOT will not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of this Part, the firm is eligible for certification.

DBE firms and firms seeking DBE certification shall cooperate fully with ODOT 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 socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm - even a DBE firm - cannot be an eligible DBE.

If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, ODOT may certify the subsidiary if it otherwise meets all requirements of this section. 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.

ODOT may certify such a subsidiary only if there is cumulatively 51 percent ownership of the subsidiary by socially and economically disadvantaged individuals. The following examples illustrate how this cumulative ownership provision works:

EXAMPLE 1:

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

EXAMPLE 2:

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

EXAMPLE 3:

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

EXAMPLE 4:

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

EXAMPLE 5:

Disadvantaged individuals own 60 percent of the holding company, which in turn owns 51 percent of a subsidiary. In this case, the cumulative ownership of the subsidiary by disadvantaged individuals is about 31 percent. This is less than 51 percent, so ODOT cannot certify the subsidiary.

EXAMPLE 6:

The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of 49 CFR Part 26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

Recognition of a business as a separate entity for tax or corporate purposes is not necessarily sufficient to demonstrate that a firm is an independent business, owned and controlled by socially and economically disadvantaged individuals.

ODOT will not require a DBE firm to be prequalified as a condition for certification.

A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR Part 26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in 49 CFR Part 26.71.

The following special rules apply to the certification of firms related to Alaska Native Corporations (ANCs).

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:

- 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;
- 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
- 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, ODOT will obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of this section. ODOT will also obtain sufficient information about the firm to administer the program.

If an ANC-related firm does not meet all the conditions above, then it must meet the same requirements as firms owned by Indian Tribes or Native Hawaiian Organizations.

Subpart E – Certification Procedures

49 CFR Part 26.81

Oklahoma Unified Certification Program (UCP)

As per 49 CFR Part 26.81(b)(2), the UCP provides a one-stop-shop where disadvantaged businesses that meet the DBE certification requirements and become certified are eligible to be used to meet the DBE goal requirements on any project with funding from the USDOT. The UCP eliminates the need for multiple certifications with recipients of funding from the U.S. Department of Transportation.

ODOT is the UCP for the State of Oklahoma. ODOT is the certifying agency and maintains all signed agreements and the list of Oklahoma UCP partners. All USDOT recipients (UCP partners) in the State of Oklahoma agree that only DBE firms certified by the ODOT may participate

The UCP shall make all certification decisions on behalf of all USDOT recipients in the state with respect to participation in the USDOT DBE Program.

- (1) The UCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in the state.
- (2) All obligations of recipients with respect to certification and nondiscrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of 49 CFR Part 26.
- (3) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state of Oklahoma if the firm is not certified by the UCP in the state in which it maintains its principal place of business.
- (4) A UCP [DBE directory](#) containing all firms certified by the ODOT is available to the public electronically, on the internet. The directory is updated as soon as additions/changes are made.

49 CFR Part 26.83

Procedures for Making Certification Decisions

Disadvantaged Business Enterprise (DBE)/Airport Concessionaire (AC) DBE Certification

The certification process is to ensure that only qualified small businesses that are independently owned and controlled by one or more socially and economically disadvantaged persons are certified for this program. Firms seeking initial, interstate, and continuing eligibility of Oklahoma DBE/ACDBE certification must do so online through the [CRCC system](#). CCD does not accept paper documents.

ODOT takes the following steps in determining whether a DBE firm meets the standards:

- a. Performs an on-site visit to the offices of the firm. ODOT interviews the principal officers of the firm and reviews their resumes and/or work histories. ODOT also performs 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 ODOT's jurisdiction or local area, and such a visit is feasible. ODOT may rely upon the site visit report of any other recipient with respect to a firm applying for certification. The site visit may be completed electronically via Teams, Zoom or other digital method.;
- b. Analyzes documentation related to the legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation/Organization; corporate bylaws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing;
- c. Analyzes the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;
- d. Determines the work history of the firm, including contracts it has received, work it has completed; and payroll records;
- e. 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;
- f. 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;
- g. Obtain complete Federal income tax returns (or requests for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last 5 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service;
- h. Require potential DBEs to complete and submit an appropriate online application form, except as otherwise provided in 49 CFR Part 26.85.

ODOT uses the application form required by 49 CFR Part 26. ODOT does not charge an application fee. ODOT's application is available online through the [CRCC system](#). To submit the application, the applicant must attest to the accuracy and truthfulness of the information on the application form by an unsworn declaration executed under penalty of perjury of the laws of the United States.

ODOT reviews all information on the form prior to making a decision about the eligibility of the firm. ODOT may request clarification of information contained in the application at any time in the application process.

When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information, ODOT will promptly make the information available to the other recipient. However, ODOT safeguards from disclosure to unauthorized persons

information gathered as part of the certification process that may reasonably be regarded as proprietary or other confidential business information, consistent with applicable Federal, state, and local law.

Once ODOT has certified a DBE, it shall remain certified until and unless ODOT has removed its certification, in whole or in part, through the procedures of 49 CFR Part 26.87, except as provided in the following:

ODOT will not require DBEs to reapply for certification or undergo a recertification process. However, ODOT may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances, a complaint, or other information concerning the firm's eligibility. If information comes to ODOT's attention that leads to question the firm's eligibility, ODOT may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

DBE firms must inform ODOT in writing of any change in circumstances affecting the firm's ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in the firm's application form.

Changes in management responsibility among members of a limited liability company are covered by this requirement. DBE Firms must attach supporting documentation describing in detail the nature of such changes. The notice must take the form of an affidavit sworn to by the applicant before a person who is authorized by state law to administer oaths or of an unsworn declaration executed under penalty of perjury of the laws of the United States. DBE firms must provide the written notification within 30 days of the occurrence of the change. DBE Firms that fail to make timely notification of such a change, will be deemed to have failed to cooperate under 49 CFR Part 26.109(c).

DBE firms must upload to ODOT, every year on the anniversary of the date of the firm's certification, the No Change Affidavit (NCA) 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 NCA must affirm that there have been no changes in the firm's circumstances affecting its ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material changes in the information provided in its application form, except for changes about which the firm has already notified ODOT. The NCA shall specifically affirm that the firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of the firm's size and gross receipts (e.g., submission of Federal tax returns). If the DBE firm fails to provide this NCA in a timely manner, the firm will be deemed to have failed to cooperate under 49 CFR Part 26.109(c).

ODOT will make decisions on applications for certification within 90 days of receiving from the applicant firm complete information required in the [CRCC system](#). ODOT 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. ODOT's failure to make a decision by the

applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to USDOT under 49 CFR Part 26.89.

ODOT will advise each applicant within 30 days from the receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

If an applicant for DBE certification withdraws its application before ODOT has issued a decision on the application, the applicant can resubmit the application at any time. ODOT will not apply the waiting period provided under 49 CFR Part 26.86(c) before allowing the applicant to resubmit its application. However, ODOT may place the reapplication at the “end of the line,” behind other applications that have been submitted since the firm's previous application was withdrawn. ODOT may also apply the waiting period provided under 49 CFR Part 26.86(c) to a firm that has established a pattern of frequently withdrawing applications before making a decision.

49 CFR Part 26.85

Interstate Certification

This section applies with respect to any firm that is currently certified in a home state outside Oklahoma. ODOT does not accept applicants not certified as a DBE in its home state. All applicants certified in its home state are considered interstate applicants and must submit the following documentation via the Interstate process in the [CRCC system](#).

When a firm currently certified in its home state applies to ODOT for DBE certification, ODOT may, at its discretion, accept the home state’s certification and certify the firm, without further procedures.

1. To obtain certification in this manner, the firm must produce to ODOT a copy of its certification from its home state.
2. Before certifying the firm, ODOT will confirm that the firm has a current valid certification from its home state. ODOT can do so by reviewing the home state’s electronic directory or obtaining written confirmation from the home state.

In any situation in which ODOT chooses not to accept the home state’s certification of a firm, the applicant firm must provide the following information:

1. The applicant must provide to ODOT a complete copy of the application form, all supporting documents, and any other information it has submitted to the home state or any other state related to the firm’s certification. This includes the NCA (see 49 CFR Part 26.83(j)) and any notices of changes (see 49 CFR Part 26.83(i)) that it has submitted to the home state, as well as any correspondence it has had with the home state’s UCP or any other recipient concerning its application or status as a DBE firm.
2. The applicant must also provide to ODOT any notices or correspondence from states other than the home state relating to its status as an applicant or certified DBE in those states.

3. If the applicant has filed a certification appeal with USDOT (see 49 CFR Part 26.89), it must inform ODOT of the fact and provide its letter of appeal and USDOT's response to ODOT.
4. In order to submit the application, the firm's owners provide an unsworn declaration executed under penalty of perjury of the laws of the United States affirming that the firm has submitted all the information required by 49 CFR Part 26.85(c) and the information is complete and, in the case of the information required by 49 CFR Part 26.85(c)(1), is an identical copy of the information submitted to the home state. If the on-site report from the home state supporting a firm's certification in the home state is more than three years old, as of the date of its application to ODOT, ODOT may require the owner to also affirm that the facts in the on-site report remain true and correct.

When ODOT receives an interstate application, within seven days ODOT will contact the home state and request a copy of the site visit review report for the firm (see 49 CFR Part 26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As the home state, ODOT will transmit this information to a requesting state within seven days of receiving the request. A pattern by a state of not making such requests in a timely manner or by not complying with such requests in a timely manner is noncompliance.

ODOT will determine whether there is good cause to believe that the home state's certification of the firm is erroneous or should not apply in Oklahoma. Reasons for making such a determination may include the following:

- a. Evidence that the home state's certification was obtained by fraud;
- b. New information, not available to the home state at the time of its certification, showing that the firm does not meet all eligibility criteria;
- c. The home state's certification was factually erroneous or was inconsistent with the requirements of this part;
- d. Oklahoma law requires a result different from that of the law of the home state; and
- e. The information provided by the applicant firm did not meet the requirements of 49 CFR Part 26.

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

If ODOT determines that there is good cause to believe that the home state's certification is erroneous or should not apply in Oklahoma, ODOT will, no later than 60 days from the date on which it receives from the all information required under 49 CFR Part 26, send to the applicant firm a notice stating the reasons for its determination.

- a. This notice will state with particularity the specific reasons why ODOT believes that the firm does not meet the requirements of this Part for DBE eligibility and must offer the firm an opportunity to respond to ODOT with respect to these reasons. The firm may elect

to respond in writing, to request an in-person meeting with ODOT's decision maker to discuss ODOT's objections to the firm's eligibility, or both.

- b. If the firm requests a meeting, ODOT will schedule the meeting to take place within 30 days of receiving the firm's request.
- c. The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of 49 CFR Part 26 with respect to the particularized issues raised by ODOT's notice. The firm is not otherwise responsible for further demonstrating its eligibility to ODOT.
- d. The decision maker for ODOT will be an individual who is thoroughly familiar with the provisions concerning certification.
- e. ODOT will issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.
- f. The firm's application for certification is stayed pending the outcome of this process. A decision under this paragraph may be appealed to the Departmental Office of Civil Rights under 49 CFR Part 26.89.

If ODOT does not receive from the home state a copy of the site visit review report within 14 days after it has made a timely request for it, ODOT may withhold action pending receipt of the site visit review report. In this event, ODOT will, no later than 30 days from the date on which it received all the information required by 49 CFR Part 26, notify the firm in writing of the delay in the process and the reason for it.

When ODOT denies a firm's application, rejects the application of the home state or any other State in which the firm is certified, or decertifies a firm, in whole or in part, ODOT will make an entry in the Departmental Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database.

ODOT will enter the following information:

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

ODOT will check the DOCR webpage at least once every month to determine whether any firm that is applying to it for certification or that it has already certified is on the list. For any such firm that is on the list, ODOT will promptly request a copy of the listed decision from the UCP that made it. As the UCP receiving such a request, ODOT will provide a copy of the decision to the requesting UCP within 7 days of receiving the request. As the UCP receiving the decision, ODOT will then consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

49 CFR Part 26.86

Denials of Initial Requests for Certification

When ODOT denies a request by a firm, which is not currently certified with ODOT, to be certified as a DBE, ODOT will upload to the firm a written explanation of the reasons for the denial, specifically referencing the evidence in the record that supports each reason for the denial. All documents and other information on which the denial is based will be made available to the applicant, on request.

When ODOT denies a firm's certification, the firm may not reapply until 12 months have passed from ODOT's action. The time period for reapplication begins to run on the date the explanation for denial was uploaded into the firm's account in the [CRCC system](#).

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

49 CFR Part 26.87

Removing a DBE's Eligibility

Any person may file a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. ODOT is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities will be protected consistent with 49 CFR Part 26.

Upon receipt of a complaint, ODOT will review its records concerning the firm, any material provided by the firm and the complainant, and other available information. ODOT may request additional information from the firm or conduct any other investigation that ODOT deems necessary. If ODOT determines that there is reasonable cause to believe that the firm is ineligible, ODOT will provide written notice to the firm that it intends to revoke certification and the reasons for the proposed revocation.

If ODOT determines that reasonable cause does not exist, ODOT will notify the complainant and the firm in writing of this determination and the reasons for it. The intent to revoke will specifically reference the evidence in the record on which each reason is based. If, based on notification by the firm of a change in its circumstances or other information that comes to ODOT's attention, ODOT determines that there is reasonable cause to believe that a currently certified firm is ineligible, ODOT will notify the firm that it intends to revoke certification and the reasons for the proposed revocation. The intent to revoke will specifically reference the evidence in the record on which each reason is based.

If the concerned OA (i.e., FHWA) determines that information in the certification records, or other information available to the concerned OA, provides reasonable cause to believe that a firm ODOT certified does not meet the eligibility criteria of this part, the concerned OA may direct ODOT to initiate a proceeding to remove the firm's certification. The concerned OA will provide ODOT and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information. ODOT will immediately commence and prosecute a proceeding to remove eligibility.

When ODOT notifies a firm that there is reasonable cause to remove its eligibility, ODOT will give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified. In such a proceeding, ODOT bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part. ODOT will maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing.

If there is an appeal to USDOT, ODOT will provide a transcript of the hearing to USDOT and, on request, to the firm. ODOT will retain the original record of the hearing. ODOT may charge the firm only for the cost of copying the record. DBE firms may elect to present information and arguments in writing, without going to a hearing. In such a situation, ODOT bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards.

ODOT will ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions.

49 CFR Part 26.88

Summary Suspension of Certification

ODOT will immediately suspend a DBE's certification without adhering to the requirements in 49 CFR Part 26.87(d) when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated. ODOT 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 ODOT in writing of any material change in circumstances or fails to timely file an annual update. In determining the adequacy of the evidence to issue a suspension of this section, ODOT shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what inferences can reasonably be drawn as a result.

The concerned OA (i.e., FHWA) may direct ODOT to take action if it determines that information available to it is sufficient to warrant immediate suspension. When a firm is suspended, ODOT will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE and through the [CRCC system](#). 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.

While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted toward a recipient's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a Commercial Useful Function (CUF) under the existing contract.

Following receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes that its eligibility should be reinstated, it must provide to ODOT information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, ODOT will either lift the suspension and reinstate the firm's certification or commence a decertification action under 49 CFR Part 26.87 of this part. If ODOT commences a decertification proceeding, the suspension remains in effect during the proceeding.

The decision to immediately suspend a DBE is not appealable to the USDOT. The failure of ODOT to either lift the suspension and reinstate the firm or commence a decertification proceeding is appealable to the USDOT under 49 CFR Part 26.89 of this part, as a constructive decertification.

49 CFR Part 26.89

Appealing Certification Decisions to the USDOT

A firm that is denied certification or whose eligibility is removed by ODOT may make an administrative appeal to ODOT. Additionally, a complainant of an ineligibility complaint to a recipient (including the concerned OA in the circumstances provided in 49 CFR Part 26.87(c)), may appeal to USDOT if ODOT does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible. Send appeals to S33Appealsmanagementrecords@dot.gov or via thumb drive to the following address:

U.S. Department of Transportation
Departmental Office of Civil Rights
External Civil Rights Programs
Room: W78-338
1200 New Jersey Avenue SE.,
Washington, DC 20590-0001

Pending the USDOT decision in the matter, ODOT's decision remains in effect. USDOT does not stay the effect of ODOT's decision while it is considering an appeal.

Appeals must be sent within 90 days of the date of ODOT's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that ODOT failed to consider, or what provisions of this Part ODOT did not properly apply. USDOT may accept an appeal filed later than 90 days after the date of the decision if USDOT determines that there was good cause for the late filing of the appeal or in the interest of justice.

When USDOT receives an appeal, USDOT requests a copy of ODOT's complete administrative record in the matter. ODOT will provide the administrative record, including a hearing transcript, within 20 days of the USDOT's request. USDOT may extend this time period on the basis of a

recipient's showing of good cause. To facilitate the USDOT's review of a recipient's decision, ODOT will ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to ODOT to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

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

When ODOT provides supplementary information to USDOT, it will also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. USDOT makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

USDOT affirms ODOT's decision unless it determines, based on the entire administrative record, that ODOT's decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

If USDOT determines, after reviewing the entire administrative record, that ODOT's decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, USDOT reverses ODOT's decision and directs ODOT to certify the firm or remove its eligibility, as appropriate. ODOT will take the action directed by the USDOT's decision immediately upon receiving written notice of it. USDOT is not required to reverse ODOT's decision if USDOT determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case. If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, USDOT may remand the record to ODOT with instructions seeking clarification or augmentation of the record before making a finding. USDOT may also remand a case for further proceedings consistent with USDOT's instructions concerning the proper application of the provisions of this part. USDOT does not uphold ODOT's decision based on grounds not specified in the decision. The USDOT's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

USDOT provides written notice of its decision to ODOT, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding. USDOT will also notify the SBA in writing when USDOT takes an action on an appeal that results in or confirms a loss of

eligibility to any SBA-certified firm. The notice includes the reasons for the USDOT's decision, including specific references to the evidence in the record that supports each reason for the decision.

The USDOT's policy is to make its decision within 180 days of receiving the complete administrative record. If USDOT does not make its decision within this period, USDOT provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made. All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

49 CFR Part 26.91

Effect of USDOT Certification Appeal Decisions

An appeal based upon ODOT's action is only binding on ODOT. Appeals based on the actions of other recipients are not binding on ODOT. When an action is binding on ODOT, ODOT will:

- a. if USDOT determines that ODOT erroneously certified a firm, remove the firm's eligibility on receipt of the determination, without further proceedings. Effective on the date of receipt of USDOT's determination, the consequences of a removal of eligibility take effect.
- b. If USDOT determines that ODOT erroneously failed to find reasonable cause to remove the firm's eligibility, expeditiously commence a proceeding to determine whether the firm's eligibility should be removed.
- c. If USDOT determines that ODOT erroneously declined to certify or removed the eligibility of the firm, certify the firm, effective on the date of receipt of the written notice of USDOT's determination.
- d. If USDOT determines that ODOT erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, take appropriate corrective action as determined by the USDOT.
- e. If USDOT affirms ODOT's determination, no further action is necessary.

Where USDOT has upheld ODOT's denial of certification to or removal of eligibility from a firm, or directed the removal of a firm's eligibility, other recipients with whom the firm is certified may commence a proceeding to remove the firm's eligibility under 49 CFR Part 26.87. Recipients cannot remove the firm's eligibility absent such a proceeding. Where USDOT has reversed ODOT's denial of certification to or removal of eligibility from a firm, other recipients must take the USDOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the USDOT's decision.

Subpart F – Compliance and Enforcement

49 CFR Part 26.101

Compliance Procedures

If ODOT fails to comply with any requirement of this part, ODOT may be subject to formal enforcement action under 49 CFR Parts 26.103 or 105 or appropriate program sanctions by the concerned OA (i.e., FHWA), such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR Part 1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.

As provided in statute, ODOT will not be subject to compliance actions or sanctions for failing to carry out any requirement of this part because ODOT has been prevented from complying because a Federal court has issued a final order in which the court found that the requirement is unconstitutional.

49 CFR Part 26.103

Enforcement Actions under FHWA and FTA

Any person who believes that a recipient has failed to comply with its obligations may file a written complaint with the concerned OA's (i.e., FHWA or FTA) Office of Civil Rights. The complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the continuing violation was known. In response to this written request, the OA's Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing.

The OA's Office of Civil Rights may protect the confidentiality of the complainant's identity as provided in 49 CFR Part 26.109. Complaints under this part are limited to allegations of violation of the provisions of this part. The concerned OA may review ODOT's compliance with this part at any time, including reviews of paperwork and on site reviews, as appropriate. The OA's Office of Civil Rights may direct the FHWA or FTA to initiate a compliance review based on complaints received.

If it appears, from the investigation of a complaint or the results of a compliance review, that ODOT, as a recipient, is in noncompliance with this part, the appropriate USDOT office promptly sends ODOT, return receipt requested, a written notice advising ODOT that there is reasonable cause to find ODOT in noncompliance. The notice states the reasons for this finding and directs ODOT to reply within 30 days concerning whether ODOT wishes to begin conciliation.

If ODOT requests conciliation, the appropriate USDOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of ODOT's request. The appropriate USDOT office

may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes. If ODOT and the appropriate USDOT office sign a conciliation agreement, then the matter is regarded as closed, and ODOT is regarded as being in compliance. The conciliation agreement sets forth the measures ODOT has taken or will take to ensure compliance. While a conciliation agreement is in effect, ODOT remains eligible for FHWA or FTA financial assistance. The concerned OA shall monitor ODOT's implementation of the conciliation agreement and ensure that its terms are complied with. If ODOT fails to carry out the terms of a conciliation agreement, ODOT is in noncompliance.

If ODOT does not request conciliation, or a conciliation agreement is not signed within the time provided, then enforcement proceedings begin.

49 CFR Part 26.105

Enforcement Actions in FAA Programs

Compliance with all requirements by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of U.S.C, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.

The provisions of 49 CFR Part 26.103(b) and this section apply to enforcement actions in FAA programs.

Any person who knows of a violation of this party by a recipient of FAA funds may file a complaint under 14 CFR Part 16 with the FAA Office of Chief Counsel.

49 CFR Part 26.107

Enforcement Actions for Participants in the DBE Program

If a firm that does not meet the eligibility criteria attempts to participate in the ODOT's DBE Program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, USDOT may initiate suspension or debarment proceedings against the firm under 2 CFR Parts 180 and 1200.

If a firm, in order to meet DBE contract goals or other DBE Program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria, USDOT may initiate suspension or debarment proceedings against that firm under 2 CFR Parts 180 and 1200.

In a suspension or debarment proceeding, the concerned OA (i.e., FHWA or FTA) may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude USDOT from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.

USDOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR Part 31. USDOT may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any program or otherwise violates applicable Federal statutes.

49 CFR Part 26.109

Confidentiality, Cooperation, and Intimidation or Retaliation

ODOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The Oklahoma Open Records Act allows ODOT to protect certain records from inspection or disclosure, including contractor records that are privileged or confidential information, etc. Notwithstanding any contrary provisions of state or local law, ODOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.

In responding to requests for information concerning any aspect of the DBE program, USDOT complies with provisions of the Federal Freedom of Information (5 U.S.C. 552) and Privacy Acts (5 U.S.C. 552a). USDOT 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, ODOT will not release 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 documentation. However, ODOT will transmit this information to USDOT in any certification appeal proceeding under 49 CFR Part 26.89 of this part or to any other state to which the individual's firm has applied for certification under 49 CFR Part 26.85.

Notwithstanding the provisions above, 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.

All participants in the ODOT's DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with USDOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of

certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future/ contracts and/or suspension and debarment).

Recipients, contractors, or any other participants in the program 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. Violations of this prohibition will result in noncompliance with this part.

Attachments

Attachment A

Policy Statement and Objectives

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

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

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



Timothy J. Gatz, Director OK Transportation

12/28/2023

Date

Attachment B

Appendix A

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 (hereinafter includes consultants) will comply with the Acts and the Regulations relative to Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Federal Highway Administration (FHWA), as they may be amended from time to time, which are herein incorporated by reference and made a part of this contract.
2. Non-discrimination: The contractor, with regard to the work performed by it during the contract, will not discriminate on the grounds of race, color or national origin in the selection and retention of subcontractors, including procurements of materials and leases of equipment. The contractor will not participate directly or indirectly in the discrimination prohibited by the Acts and Regulations, including employment practices when the contract covers any activity, project or program set forth in Appendix B of 49 CFR Part 21.
3. Solicitations for Subcontracts, Including Procurements of Materials and Equipment. In all solicitations, either by competitive bidding or negotiation made by the contractor for work to be performed under a subcontract, including procurements of materials, leases of equipment, each potential subcontractor or supplier will be notified by the contractor of the contractor’s obligations under this contract and the Acts and the Regulations relative to Non-discrimination on the grounds of race, color, or national origin.
4. Information and Reports. The contractor will provide all information and reports required by the Acts, the Regulations and Directives issued pursuant thereto and will permit access to its books, records, accounts, other sources of information and its facilities as may be determined by the Recipient or the FHWA to be pertinent to ascertain compliance with such Acts, Regulations and Instructions. Where any information required of a contractor is in exclusive possession of another who fails or refuses to furnish the information, the contractor will so certify to the Recipient or the FHWA, as appropriate, and will set forth what efforts it has made to obtain the information.
5. Sanctions for Noncompliance: In the event of a contractor’s noncompliance with the Non-discrimination provisions of this contract, the Recipient will impose such contract sanctions as it or the FHWA may determine to be appropriate, including but not limited to: a. withholding payments to the contractor under the contract until the contractor complies; and/or b. cancelling, terminating or suspending a contract, in whole or in part.
6. Incorporation of Provisions: The contractor will include the provisions of paragraphs one through six in every subcontract, including procurements of materials and leases of equipment, unless exempt by the Acts, the Regulations and Directives issued pursuant thereto. The contractor will take action with respect to any subcontractor or procurement as the Recipient or the FHWA may direct as a means of enforcing such provisions including sanctions for noncompliance. Provided, that if the contractor becomes involved in, or is threatened with litigation by a subcontract, or supplier because of such direction, the contractor may request the Recipient to enter into any litigation to protect the interests of the Recipient. In addition, the contractor may request the United States to enter into the litigation to protect the interests of the United States.

Signature

Date

Appendix B

Clauses for Deeds Transferring United States Property

The following clauses will be included in deeds effecting or recording the transfer of real property, structures, or improvements thereon, or granting interest therein from the United States pursuant to the provisions of Assurance 4:

NOW, THEREFORE, the U.S. Department of Transportation as authorized by law and upon the condition that the Grantee will accept title to the lands and maintain the project constructed thereon in accordance with the Consolidated and Further Continuing Appropriations Act, 2013 (Pub. L. 113-6, March 26, 2013), the Regulations for the Administration of FY 2013 TIGER Discretionary Grant Program, and the policies and procedures prescribed by the Federal Highway Administration (FHWA) of the U.S. Department of Transportation in accordance and in compliance with all requirements imposed by Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation pertaining to and effectuating the provisions of Title VI of the Civil Rights Act of 1964 (78 Stat. 252; 42 U.S.C. § 2000d to 2000d-4), does hereby remise, release, quitclaim and convey unto the Grantee all the right, title and interest of the U.S. Department of Transportation in and to said lands described in Exhibit A attached hereto and made a part hereof.

Habendum Clause

TO HAVE AND TO HOLD said lands and interests therein unto Grantee and its successors forever, subject, however, to the covenants, conditions, restrictions and reservations herein contained as follows, which will remain in effect for the period during which the real property or structures are used for a purpose for which Federal financial assistance is extended or for another purpose involving the provision of similar services or benefits and will be binding on the Grantee, its successors and assigns.

The Grantee, in consideration of the conveyance of said lands and interests in lands, does hereby covenant and agree as a covenant running with the land for itself, its successors and assigns, that (1) no person will on the grounds of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination with regard to any facility located wholly or in part on, over, or under such lands hereby conveyed [,] [and]* (2) that the Grantee will use the lands and interests in lands and interests in lands so conveyed, in compliance with all requirements imposed by or pursuant to Title 49, Code of Federal Regulations, U.S. Department of Transportation, Subtitle A, Office of the Secretary, Part 21, Non-discrimination in Federally-assisted programs of the U.S. Department of Transportation, Effectuation of Title VI of the Civil Rights Act of 1964, and as said Regulations and Acts may be amended[, and (3) that in the event of breach of any of the above-mentioned non-discrimination conditions, the Department will have a right to enter or re-enter said lands and facilities on said land, and that above described land and facilities will thereon revert to and vest in and become the absolute property of the U.S. Department of Transportation and its assigns as such interest existed prior to this instruction].*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary in order to make clear the purpose of Title VI.)

Appendix C

Clauses for Transfer of Real Property Acquired or Improved Under the Activity, Facility or Program

The following clauses will be included in deeds, licenses, leases, permits, or similar instruments entered into by the Grantee pursuant to the provisions of Assurance 7(a):

A. The (grantee, lessee, permittee, etc. as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree [in the case of deeds and leases add “as a covenant running with the land”] that:

1. In the event facilities are constructed, maintained, or otherwise operated on the property described in this (deed, license, lease, permit, etc.) for a purpose for which a U.S. Department of Transportation activity, facility, or program is extended or for another purpose involving the provision of similar services or benefits, the (grantee, licensee, lessee, permittee, etc.) will maintain and operate such facilities and services in compliance with all requirements imposed by the Acts and Regulations (as may be amended) such that no person on the grounds of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities.

B. With respect to licenses, leases, permits, etc., in the event of breach of any of the above Non-discrimination covenants, Grantee will have the right to terminate the (lease, license, permit, etc.) and to enter, re-enter, and repossess said lands and facilities thereon, and hold the same as if the (lease, license, permit, etc.) had never been made or issued.*

C. With respect to a deed, in the event of breach of any of the above Non-discrimination covenants, the Grantee will have the right to enter or re-enter the lands and facilities thereon, and the above described lands and facilities will there upon revert to and vest in and become the absolute property of the Grantee and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Appendix D

Clauses for Construction/Use/Access to Real Property Acquired Under the Activity, Facility or Program

The following clauses will be included in deeds, licenses, permits, or similar instruments/agreements entered into by Grantee pursuant to the provisions of Assurance 7(b):

A. The (grantee, licensee, permittee, etc., as appropriate) for himself/herself, his/her heirs, personal representatives, successors in interest, and assigns, as a part of the consideration hereof, does hereby covenant and agree (in the case of deeds and leases add, "as a covenant running with the land") that (1) no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or be otherwise subjected to discrimination in the use of said facilities, (2) that in the construction of any improvements on, over, or under such land, and the furnishing of services thereon, no person on the ground of race, color, or national origin, will be excluded from participation in, denied the benefits of, or otherwise be subjected to discrimination, (3) that the (grantee, licensee, lessee, permittee, etc.) will use the premises in compliance with all other requirements imposed by or pursuant to the Acts and Regulations, as amended, set forth in this Assurance.

B. With respect to (licenses, leases, permits, etc.), in the event of breach of any of the above Non-discrimination covenants, Grantee will have the right to terminate the (license, permit, etc., as appropriate) and to enter or re-enter and repossess said land and the facilities thereon, and hold the same as if said (license, permit, etc., as appropriate) had never been made or issued.*

C. With respect to deeds, in the event of breach of any of the above Non-discrimination covenants, Grantee will there upon revert to and vest in and become the absolute property of Grantee and its assigns.*

(*Reverter clause and related language to be used only when it is determined that such a clause is necessary to make clear the purpose of Title VI.)

Appendix E

During the performance of this contract, the contractor, for itself, its assignees, and successors in interest (hereinafter referred to as the “contractor”) agrees to comply with the following non-discrimination statutes and authorities; including but not limited to:

Pertinent Non-Discrimination Authorities:

- Title VI of the Civil Rights Act of 1964 (42 U.S.C. § 2000d *et seq.*, 78 stat. 252), (prohibits discrimination on the basis of race, color, national origin); and 49 CFR Part 21.
- The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (42 U.S.C. § 4601), (prohibits unfair treatment of persons displaced or whose property has been acquired because of Federal or Federal-aid programs and projects);
- Federal-Aid Highway Act of 1973, (23 U.S.C. § 324 *et seq.*), (prohibits discrimination on the basis of sex);
- Section 504 of the Rehabilitation Act of 1973, (29 U.S.C. § 794 *et seq.*), as amended, (prohibits discrimination on the basis of disability); and 49 CFR Part 27;
- The Age Discrimination Act of 1975, as amended, (42 U.S.C. § 6101 *et seq.*), (prohibits discrimination on the basis of age);
- Airport and Airway Improvement Act of 1982, (49 USC § 471, Section 47123), as amended, (prohibits discrimination based on race, creed, color, national origin, or sex);
- The Civil Rights Restoration Act of 1987, (PL 100-209), (Broadened the scope, coverage and applicability of Title VI of the Civil Rights Act of 1964, The Age Discrimination Act of 1975 and Section 504 of the Rehabilitation Act of 1973, by expanding the definition of the terms “programs or activities” to include all of the programs or activities of the Federal-aid recipients, sub-recipients and contractors, whether such programs or activities are Federally funded or not);
- Titles II and III of the Americans with Disabilities Act, which prohibit discrimination on the basis of disability in the operation of public entities, public and private transportation systems, places of public accommodation, and certain testing entities (42 U.S.C. §§ 12131 – 12189) as implemented by Department of Transportation regulations at 49 C.F.R. parts 37 and 38;
- The Federal Aviation Administration’s Non-discrimination statute (49 U.S.C. § 47123) (prohibits discrimination on the basis of race, color, national origin, and sex);
- Executive Order 12898, Federal Actions to Address Environmental Justice in Minority Populations and Low-Income Populations, which ensures discrimination against minority populations by discouraging programs, policies, and activities with disproportionately high and adverse human health or environmental effects on minority and low-income populations;
- Executive Order 13166, Improving Access to Services for Persons with Limited English Proficiency, and resulting agency guidance, national origin discrimination includes discrimination because of limited English proficiency (LEP). To ensure compliance with Title VI, you must take reasonable steps to ensure that LEP persons have meaningful access to your programs (70 Fed. Reg. at 74087 to 74100);
- Title IX of the Education Amendments of 1972, as amended, which prohibits you from discriminating because of sex in education programs or activities (20 U.S.C. 1681 *et seq.*).

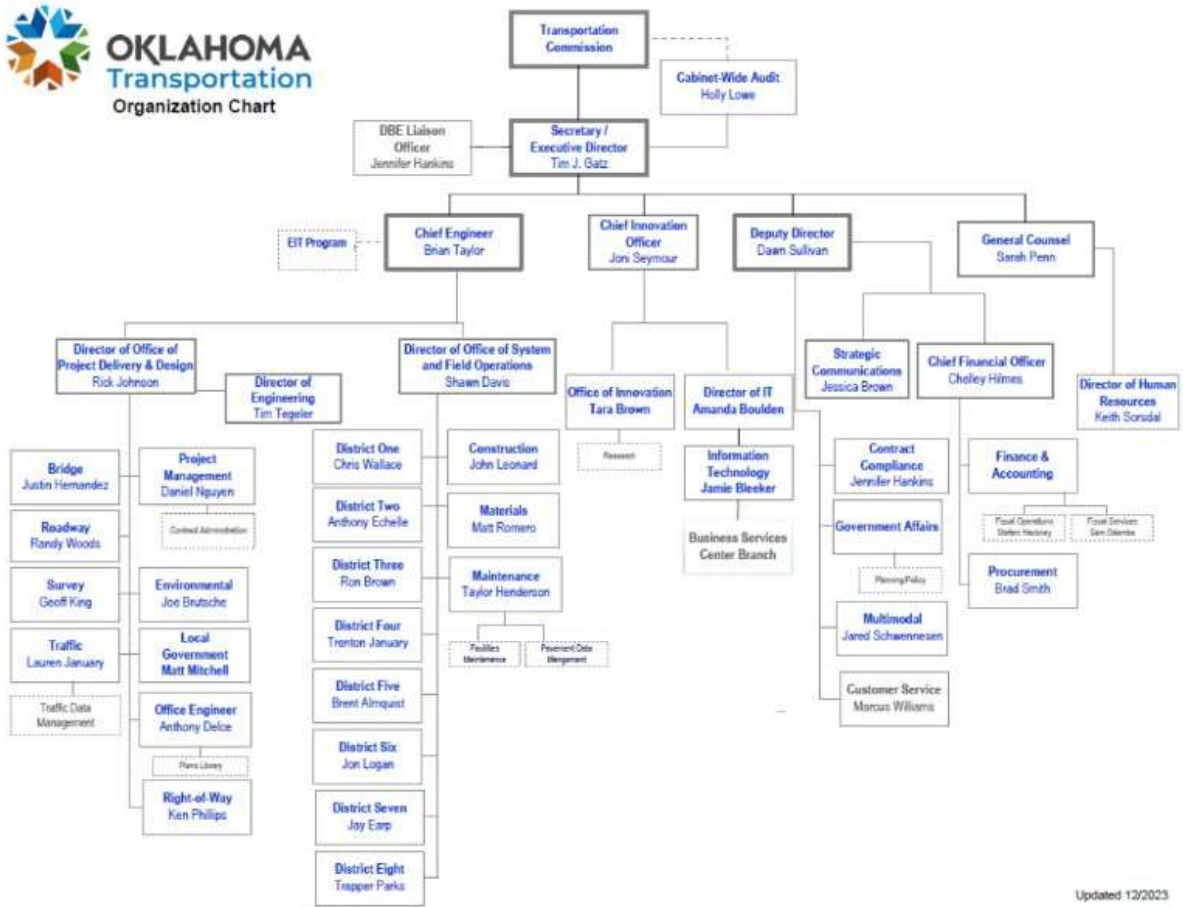
Signature

Date

Attachment C



OKLAHOMA
Transportation
Organization Chart

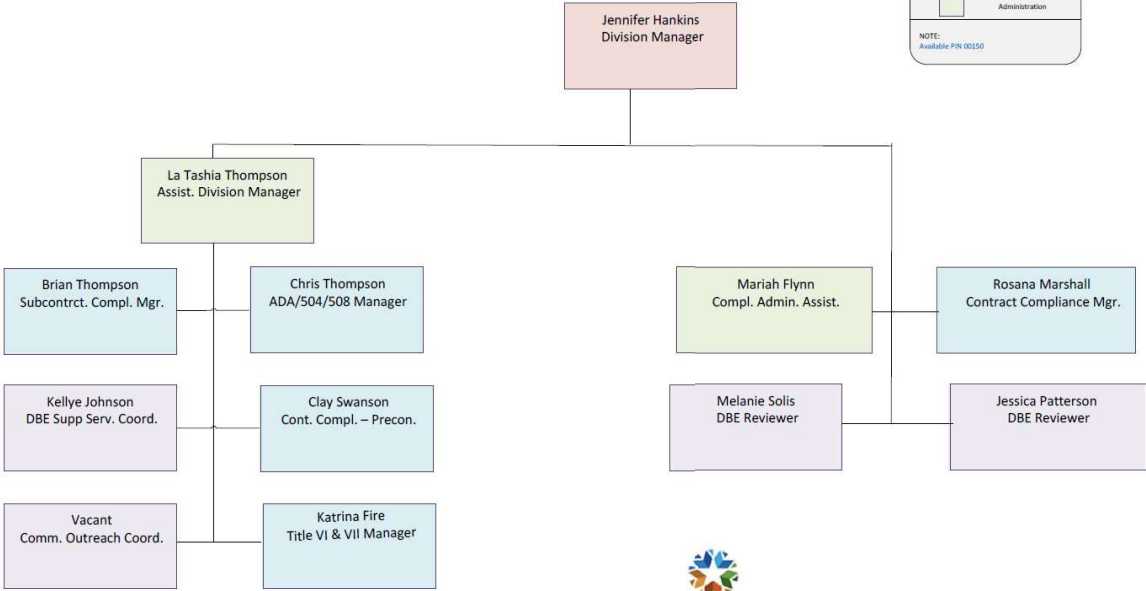


Updated 12/2023

Attachment D

Contract Compliance October 2023

Legend	
	Area Manager
	Compliance
	Supportive Services
	Administration
NOTE: Available PIN 00150	



Attachment E

OKLAHOMA DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISE (DBE) PROGRAM

GOAL ON FEDERALLY-ASSISTED PROJECTS

FOR

FEDERAL FISCAL YEARS 2023, 2024 & 2025

Prepared by:

Jennifer Hankins

Contract Compliance Division

In Compliance with:

Title 49 Part 26 of the Code of Federal Regulations

(49 CFR Part 26)



OKLAHOMA
Transportation

INTRODUCTION

This report details the Oklahoma Department of Transportation's (ODOT) process for setting the Federal Fiscal Years (FFY) 2023, 2024 and 2025 overall goal for Disadvantaged Business Enterprise (DBE) participation in federally assisted highway projects. The goal setting methodology complies with the DBE rule set forth in the Code of Federal Regulations, 49 CFR Part 26.45. The methodology includes data from both the construction and preconstruction side.

This submission includes a description of the methodology used to establish the goal, including the base figure and the evidence by which it was calculated, evidence relied upon for any adjustments to the base figure, and a projection of the portions of the overall goal expected to be met through race-conscious and race-neutral measures, respectively.

For questions or comments contact:

Jennifer Hankins
Contract Compliance Division Manager/DBE Liaison Officer
Oklahoma Department of Transportation
200 N.E. 21st Rm. 1-C-1
Oklahoma City, Oklahoma 73105
Phone (405) 521-2072
jhankins@odot.org

DESCRIPTION OF METHODOLOGY

Proposed DBE Goal for Federal Fiscal Years 2023, 2024, and 2025

The Oklahoma Department of Transportation (ODOT) proposes the following goal for participation by DBEs on federally assisted contracts for FFYs 2023, 2024 and 2025:

Race Neutral	-	7.82%
Race Conscious	-	<u>8.18%</u>
Total DBE Goal	-	16.00%

ODOT complied with 49 CFR 26.45 by following a two-step process for analyzing relevant data to establish its overall DBE goal:

- Step 1 describes the calculation of a base figure for the relative availability of minority- and woman-owned firms.
- Step 2 is the examination of all the evidence available to determine if an adjustment to the base figure is needed to arrive at the overall goal. If the examination shows no need for an adjustment, then no adjustment is to be made.

I. Step One Base Figure Section 26.45(c)

To establish the base figure, ODOT commissioned Colette Holt & Associates (“CHA”) to perform a disparity study (Disparity Study) of its contracts funded by the Federal Highway Administration in conformance with strict constitutional scrutiny and the Disadvantaged Business Enterprise (“DBE”) program regulations at 49 C.F.R. Part 26 to determine the relative availability (percentage) of Disadvantaged Business Enterprise (DBE) firms available to bid on ODOT’s FHWA-assisted contracting opportunities. As described in USDOT Guidance and 49 C.F.R. §26.45(c), this percentage, or DBE Relative Availability, can be calculated as follows:

$$\frac{\text{Ready, Willing and Able DBEs}}{\text{All Firms Ready, Willing and Able (DBEs and non-DBEs)}}$$

To meet this requirement, the Disparity Study determined ODOT’s utilization of Disadvantaged Business Enterprises during fiscal years 2015 through 2019; the availability of these firms as a percentage of all firms in ODOT’s geographic and industry market areas; and any disparities between ODOT’s utilization of DBEs and DBE availability.

To achieve this, the Disparity Study:

- Analyzed the use and availability of minority- and woman-owned firms in Oklahoma public highway transportation construction and design contracts.
- Examined other quantitative analyses of marketplace conditions and further analyzed disparities in the wider Oklahoma construction economy, where affirmative action is rarely practiced, to evaluate whether barriers continue to impede opportunities for minorities and women when remedial intervention is not imposed. The Disparity Study also gathered qualitative data about the experiences of minority- and woman-owned firms in obtaining ODOT’s contracts and the associated contracts. The disparity study followed

federal regulations and court decisions regarding DBE and other business assistance programs.

- Reviewed anecdotal information from data collected through:
 - In-depth business owner interviews (98 participants)
 - Business owner surveys/written testimony (120 participants who submitted anecdotal information)

The Disparity Study examined ODOT's contract and procurement data dollars for the fiscal years 2015 through 2019. After contacting prime vendors and taking other steps to obtain a complete set of variables, the Final Contract Data File ("FCDF") contained 349 prime contracts and 1,706 subcontracts. The total net dollar value of prime contracts was \$1,221,522,596; the total net dollar value of subcontracts was \$475,477,246. The Final Contract Data File was used to determine the geographic and product markets for the analyses, and to estimate the utilization of DBEs on ODOT's construction and design contracts.

Establishing the Relevant Market Area

To determine the relevant geographic market area, ODOT analyzed data from the 2021 Disparity Study, which found that 87.6% of contracts were awarded to firms located within the geographic boundary of the State of Oklahoma. Therefore, the State of Oklahoma was determined to be the relevant market area.

DBE Availability

To arrive at the Step-One base figure, ODOT used data from the 2021 Disparity Study in accordance with 49 CFR §26.4(c)(3) to determine the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate in FHWA-assisted contracts within the Market Area. The DBE relative availability for each NAICS code is listed in column A in the table below.

Weighting DBE relative availability results in a more accurate picture of which firms are available to participate in ODOT's opportunities and ensures that the Base Figure is narrowly tailored. For example, high availability in a NAICS code in which minimal dollars are spent would give the impression that there are more DBEs that can perform work on agency contracts than are actually ready, willing and able. Conversely, a low availability in a high dollar scope would understate the potential dollars that could be spent with DBEs.

The weighting factor utilized is the percentage of work contracted by NAICS code on federally-assisted contracts. The contract data from federally-assisted contracts from 2015 thru 2019 (inclusive) was used to calculate the weighting factor for each NAICS code. This data is column B in the table below.

For each NAICS code, the DBE relative Availability (column A) is multiplied by the weighting factor (column B) to obtain the DBE goal percentage, or Base Figure by NAICS code (column C). The results by NAICS code are totaled to yield the overall weighted DBE availability. ODOT proposes to utilize this overall weighted DBE availability as its Step One base figure in calculating its Overall DBE Goal.

NAICS	NAICS Description	DBE Relative Availability (A)	Weighting (% of Total Dollars) (B)	Base Figure (C = A x B)
236220	Commercial and Institutional Building Construction	17.1%	0.001%	0.0%
237110	Water and Sewer Line and Related Structures Construction	6.4%	1.2%	0.1%
237130	Power and Communication Line and Related Structures Construction	11.1%	0.04%	0.0%
237310	Highway, Street, and Bridge Construction	20.8%	80.0%	16.6%
237990	Other Heavy and Civil Engineering Construction	12.8%	0.3%	0.0%
238110	Poured Concrete Foundation and Structure Contractors	3.6%	0.1%	0.0%
238120	Structural Steel and Precast Concrete Contractors	20.3%	0.8%	0.2%
238140	Masonry Contractors	1.5%	0.02%	0.0%
238210	Electrical Contractors and Other Wiring Installation Contractors	5.9%	1.0%	0.1%
238220	Plumbing, Heating, and Air-Conditioning Contractors	4.0%	0.6%	0.0%
238290	Other Building Equipment Contractors	10.0%	0.004%	0.0%
238320	Painting and Wall Covering Contractors	3.4%	0.1%	0.0%
238350	Finish Carpentry Contractors	3.3%	0.004%	0.0%
238390	Other Building Finishing Contractors	3.1%	0.1%	0.0%
238910	Site Preparation Contractors	11.8%	4.0%	0.5%
238990	All Other Specialty Trade Contractors	6.1%	0.5%	0.0%
327320	Ready-Mix Concrete Manufacturing	3.5%	0.002%	0.0%
327992	Ground or Treated Mineral and Earth Manufacturing	0.0%	0.1%	0.0%
332999	All Other Miscellaneous Fabricated Metal Product Manufacturing	13.0%	0.003%	0.0%
333120	Construction Machinery Manufacturing	6.9%	0.1%	0.0%
444190	Other Building Material Dealers	5.4%	0.1%	0.0%
484110	General Freight Trucking, Local	3.4%	0.4%	0.0%
484220	Specialized Freight (except Used Goods) Trucking, Local	30.6%	0.1%	0.0%
524126	Direct Property and Casualty Insurance Carriers	2.1%	0.0001%	0.0%
541320	Landscape Architectural Services	3.0%	0.01%	0.0%

541330	Engineering Services	11.3%	4.5%	0.5%
541350	Building Inspection Services	3.0%	0.001%	0.0%
541370	Surveying and Mapping (except Geophysical) Services	15.0%	0.9%	0.1%
541380	Testing Laboratories	7.1%	0.9%	0.1%
541420	Industrial Design Services	50.0%	0.001%	0.0%
541611	Administrative Management and General Management Consulting Services	7.2%	0.001%	0.0%
541620	Environmental Consulting Services	14.7%	0.3%	0.0%
541690	Other Scientific and Technical Consulting Services	9.3%	0.2%	0.0%
541720	Research and Development in the Social Sciences and Humanities	10.1%	0.003%	0.0%
541921	Nonscheduled Chartered Passenger Air Transportation	6.7%	0.01%	0.0%
541990	All Other Professional, Scientific, and Technical Services	5.5%	0.1%	0.0%
561320	Temporary Help Services	14.1%	0.01%	0.0%
561730	Landscaping Services	3.5%	1.2%	0.0%
561990	All Other Support Services	3.2%	2.2%	0.1%
926120	Regulation and Administration of Transportation Programs	0.0%	0.01%	0.0%
Total			100%	18.5%

II. Step Two: Adjustments to the Base Figure - §26.45(d):

After establishing the Base Figure, the Oklahoma Department of Transportation (ODOT) reviewed and assessed other known evidence potentially impacting the relative availability of DBEs within ODOT’s market area, in accordance with prescribed narrow tailoring provisions set forth under 49 CFR 26.45 Step 2: DBE Goal Adjustment guidelines.

Evidence considered in making an adjustment to the Base Figure included the ODOT’s Past DBE Goal Participation, Evidence from Disparity Studies, and Other Evidence, as follows:

A. Past DBE Goal Attainments

The following table below reflects the demonstrated capacity of DBEs (measured by historical DBE participation) on FHWA-assisted contracts awarded by ODOT within the last three (3) Federal Fiscal Years:

Year	Attainment
2020	13.84%
2021	10.45%

2022	13.49%
Median of Past Attainments = 10.45%, 13.49%, 13.84% = 13.49% Median Past Participation	

ODOT considered an adjustment to the Base Figure based on the median DBE participation on FHWA-assisted contracts awarded within the past three FFYs (2019/21).

The median for the past three years is lower than the Base Figure derived from Step 1; therefore, an adjustment to the Base Figure based on ODOT’s past DBE goal participation has been made. As three years of DBE Participation data was reviewed and the years reviewed included projects with a similar variety in scope to the scopes projected for the 2023/25 period, ODOT can reasonably assume that the rates of DBE participation reflected are an accurate reflection of DBE capacity to perform in the 2023/25 overall goal period. The adjustment is calculated in accordance with FHWA guidance by averaging the Base Figure with the Median DBE Past participation, as shown below.

$18.5\% \text{ Base Figure} + 13.49\% \text{ Median Past Participation} = 31.99\%$ $31.99/2 = 16\% \text{ (rounded) Adjusted Base Figure}$
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The formula resulted in a downward adjustment to Base Figure from 18.5% to 16%.

B. Evidence from Disparity Studies

Colette Holt & Associates (“CHA”) was retained by the Oklahoma Department of Transportation (“ODOT”) to perform a disparity study (Disparity Study) of its contracts funded by the Federal Highway Administration in conformance with strict constitutional scrutiny and the Disadvantaged Business Enterprise (“DBE”) program regulations at 49 CFR Part 26. The Disparity Study determined ODOT’s utilization of Disadvantaged Business Enterprises during fiscal years 2015 through 2019; the availability of these firms as a percentage of all firms in ODOT’s geographic and industry market areas; and any disparities between ODOT’s utilization of DBEs and DBE availability.

Additionally, the Disparity Study found substantively significant disparities for Black, Hispanic, and Native American firms. While there were not substantively significant disparities for Asian and White woman firms, a deeper analysis presented evidence that the high utilization for these two groups relative to their weighted availability might be caused by the unusual level of concentration of contract success among a few firms in a small number of industries. This suggests that while the ODOT’s program has succeeded in breaking down barriers to Asian and White woman participation on ODOT contracts, opportunities are highly concentrated amongst a small group of firms.

The Disparity Study further considered evidence of the experiences of minority- and woman-owned firms outside the DBE program as they are relevant and probative of the likely results of ODOT adopting a race-neutral program. To examine the outcomes throughout the Oklahoma construction industry, the Disparity Study explored two Census Bureau datasets and the government and academic literature relevant to how discrimination in ODOT’s industry market and throughout the wider Oklahoma construction economy

affects the ability of minorities and women to fairly and fully engage in ODOT's prime contract and subcontract opportunities. The evidence from the datasets explored supports the conclusion that ODOT should consider the use of race-conscious contract goals to ensure a level playing field for all firms.

ODOT's Disparity Study satisfies legal standards and guidance from the U.S. Department of Transportation concerning the implementation of race-conscious application, the ODOT has elected to utilize this study as a basis for continuing to implement the race-conscious component of their Overall DBE goal. ODOT will ensure that the use of race-conscious goals is narrowly tailored and consistent with other relevant legal standards.

C. Other Evidence

In addition to quantitative data, anecdotal evidence of firms' marketplace experiences is relevant to evaluating whether the effects of current or past discrimination continue to impede opportunities for DBE firms such that race-conscious contract goals are needed to ensure equal opportunities to compete for ODOT contracts. To explore this type of anecdotal evidence, ODOT's Disparity Study received input from 98 participants in small group business owner interviews. We also received 120 responses to an electronic anecdotal survey and written comments during the study period.

Results from the anecdotal survey were similar to the data provided in the interviews. Responses among minority- and woman-owned firms to the closed ended questions indicate that almost a third (31.7 percent) still experience barriers to equal contracting opportunities. More than a quarter (28.3) have their competency questioned because of their race or gender. Almost 17 percent experience job-related sexual or racial harassment.

The anecdotal evidence further supports the conclusion that ODOT should consider the use of race-conscious contract goals to ensure a level playing field for all firms.

The Overall DBE Goal for FFY 2023/25 goal period for ODOT's FHWA-assisted contracts is 16%.

The proposed goal further serves to identify the relative availability of DBEs based on evidence of ready, willing, and able DBEs to all comparable firms, which are known to be available to compete for and perform on ODOT's FHWA-assisted contracts. The proposed goal reflects a determination of the level of DBE participation, which would be expected absent the effects of discrimination.

III. Race-Neutral/Race Conscious Measures

ODOT intends to meet the maximum feasible portion of its overall goal through race neutral measures. Race-neutral participation includes 1) When DBE prime contractors are awarded contracts through customary competitive bidding procedures, 2) When a DBE is awarded a subcontract on projects that do not carry a specific DBE goal, or 3) When a DBE is awarded a subcontract in excess of the advertised DBE project goal.

Where race neutral measures are inadequate to meet the overall goal, ODOT will utilize race-conscious means (establish contract-specific DBE goals) on FHWA-assisted contracts with subcontracting opportunities and relative DBE availability.

ODOT may establish a DBE contract goal that is higher or lower than its overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of

the particular contract. ODOT’s contract goals will provide for participation by all certified DBEs and will not be subdivided into group-specific goals.

ODOT projects to meet 7.82% of the adjusted goal (16%) via race-neutral means and 8.18% via race-conscious means. The table below illustrates the past race-neutral and race-conscious DBE participation (including DBE prime contractors and DBE subcontractors on contracts without goals or more than project goals) obtained in FFY’s 2020 through 2022.

Table 4: Past Race-Neutral DBE Participation			
FFY	Attained %	RC	RN
2020	13.84%	5.17%	8.67%
2021	10.45%	3.56%	6.88%
2022	13.49%	5.66%	7.82%
Median RN past participation = 7.82%			

Race Neutral and Race Conscious Projections

Based on the race neutral figures and attainments from FFYs 2020-2022, the median is 7.82%. Based on the median race-neutral participation of the previous years, ODOT could expect to meet 7.82% of the calculated goal via race-neutral means.

DOT has identified that the amount of past participation obtained on recent and like projects can be used as a basis for estimating a similar level of race/gender-neutral participation in the next overall goal period. ODOT confirmed that the projects completed during FFYs 2020 through 2022 were similar to the types of projects being procured in the upcoming overall goal period, a required criterion for consideration in utilizing DBE prime participation to validate race-neutral application. As 7.82% DBE participation was achieved on like-projects during the period reviewed, ODOT concluded that this rate of DBE participation should be considered in the amount of race-neutral participation that could be expected in the overall goal period.

ODOT has and continues to implement several of the means discussed in the regulations to increase the race-neutral participation by DBE firms. These means include 1) Providing technical assistance and other services to all small businesses, 2) Conducting public forums to communicate the requirements of the DBE Program and the benefits to all interested firms, 3) Improving the previously implemented DBE supportive services program, 4) Recruiting DBE applicants, particularly in fields in which DBE participation has historically been low, and 5) Increasing coordination with and support of ODOT's pre-construction branch to increase DBE participation in and tracking of DBE participation in non-construction contracts. The above list is an example of the efforts the Department makes to improve the participation of DBEs in the highway program.

Through the DBE Supportive Services Program, ODOT is increasing efforts to improve the viability of existing firms by offering tailored assessments, specific training and technical assistance. Related activities include recruitment of DBE firms with concentration on underutilized minority groups and underutilized areas of work, aiding in business development, increasing contract success opportunities, and improving overall DBE performance. ODOT will target recruiting efforts toward areas of subcontracting previously underrepresented by the existing DBE population such as bridge repair and painting. By increasing the pool

of certified DBEs in areas of work not currently performed by DBEs, ODOT forecasts that the availability of DBEs for subcontracting will increase.

IV. Public Participation And Facilitation

In accordance with Public Participation Regulatory Requirements of Title 49 CFR Part 2645(g), minority, women, local business chambers, and community organizations within ODOT's market area were consulted and provided an opportunity to review ODOT's goal analysis and provide input.

The public participation process included the following:

- A. Consultation. A public meeting was held on July 21st, 2022 in Oklahoma City, OK. Information regarding the public meeting was posted on the ODOT Contract Compliance Division's website on July 10, 2022.
- B. Published Notice. The proposed goal methodology report along with an electronic comment form was posted on the ODOT Contract Compliance Division's website, emailed to all who email address that were registered to receive updates from ODOT, and emailed to the Association of Oklahoma General Contractors (AOGC) and American Counsel of Engineering Consultants (ACEC) for additional notification to its members on July 24, 2022. The notice informed the public of the proposed goal and its rationale. The notice also stated that the report was available for inspection during normal business hours and that comments would be accepted until August 23, 2022.
- C. Comments. No persons, businesses, or representatives attended the public meeting and no comments were received during the 30 days following the notice or meetings or during the period that the proposed methodology was posted to the public. Previous Overall Goal Methodologies posted for public comment also did not receive comments relative to the goal methodology or availability of DBEs.

Furthermore, ODOT consults and will continue to consult with minority groups and organizations year-round via event attendance and facilitation to directly solicit the public in-person regarding input they have on DBE opportunities and any real and/or perceived barriers to DBE participation.

Comments received from ODOT's on-going consultation will be reviewed and considered in determining whether an adjustment to the 16% Overall Goal (RN Application 7.82% / RC Application 8.18%) is necessary.

Attachment F

Construction Project Level DBE Goals

All construction projects that use federal funds are considered for a DBE goal. Criteria considered include ODOT’s current progress toward the annual DBE Goal, as well as DBE Availability with respect to work types involved in the scope of the project.

If the DBELO determines a goal is appropriate, a proposal-system generated “DBE Interest Report” is consulted to determine the DBE opportunities by project based on work type and location. This report pulls data from ODOT’s DBE directory, which is refined to include specific information regarding the work type of Heavy Construction each DBE is certified to perform on ODOT projects. This more specific and tailored “Specialty Codes” reflect more closely the available DBE work than generic NAICS Codes. The 26 specialty codes are:

Asphalt Paving	Planting, Landscaping, Sitemscaping
Bridge Construction (Span > 20 ft)	Railroad
Bridge Painting	Small Structures (RCB, Curb & Gutter, Drives, Longitudinal Barrier, Side-Walks, etc)
Bridge Rehabilitation & Repair	Staking/Survey
Bridge Removal	Storm Sewer
Cable Barrier	Traffic Control (Construction)
Drainage (RCB & Culverts)	Traffic Lighting & Signals
Earthwork Grading and Subgrade	Traffic Safety
Erosion and Sediment Control	Traffic Signing & Striping
Fencing	Trucking
Guardrail	Utility Installation/Relocation
ITS	Miscellaneous
Pavement Removal	
PC Concrete Paving	

The DBE Interest Report includes the following calculations to be considered by the DBELO:

$$DBE\ Project\ Goal = \frac{Sum\ of\ All(SC\ Availability * Specialty\ Code\ Work\ Items)}{Total\ Contract\ Value}$$

Note: SC Availability= DBE by Specialty Code/Total Contractors by Specialty Code

1. The calculated DBE percentage will be rounded up or down by CCD to the nearest 0.5%, and will serve as the proposed DBE goal.
2. ODOT will evaluate the calculated DBE Goal on a project-by-project basis and adjust if warranted. ODOT will document and retain any adjustments along with supporting data.
3. Once the goals are determined for federal projects on the bid opening, typically 60 days prior to the bid opening, the DBE Goal Committee will convene to verify the proposed goals. The CCD will have the final approval of each project DBE goal.
4. Once the DBE goals have been finalized, the CCD will provide Office Engineer Division with the final project DBE goals for incorporation into the bidding documents.
5. The DBE goals are verified once more by CCD at the Pre-Advertisement meeting held five weeks prior to the upcoming bid opening.

ODOT Disclaimer

The Oklahoma Department of Transportation (ODOT) ensures that no person or groups of persons shall, on the grounds of race, color, sex, religion, national origin, age, disability, retaliation or genetic information, be excluded from participation in, be denied the benefits of, or be otherwise subjected to discrimination under any and all programs, services, or activities administered by ODOT, its recipients, sub-recipients, and contractors. To request an accommodation please contact the ADA Coordinator at 405-521-4140 or the Oklahoma Relay Service at 1-800-722-0353. If you have any ADA or Title VI questions email ODOT-ada-titlevi@odot.org.