



STATE OF FLORIDA

DEPARTMENT OF TRANSPORTATION

DISADVANTAGED BUSINESS ENTERPRISE

PROGRAM PLAN

Updated on July 28, 2011
Revised on October 27, 2011

Equal Opportunity Office
605 Suwannee Street, MS 65
Tallahassee, Florida 32399

Phone: (850) 414-4747

FLORIDA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

Definitions of Terms

The terms used in this program have the meanings defined in 49 CFR Part 26.5.

Objectives/Policy Statement (Parts 26.1, 26.23)

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

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

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

The Manager of the Department's Equal Opportunity Office has been designated as the DBE Liaison Officer. In that capacity, the Manager of the Department's Equal Opportunity Office is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by the Department in its financial assistance agreements with the USDOT.

The DBE policy statement as found in **Attachment 1** to this Program Plan has been signed and disseminated to the Executive Board and is available to the public on the Equal Opportunity Office webpage. This statement was originally distributed to DBE and non-DBE business communities that perform work for the Department on USDOT-

assisted contracts through emails to all certified DBEs, prime contractors and consultants.

Nondiscrimination (Part 26.7)

The Department will never exclude any person from participation in, deny any person the benefits of, or otherwise discriminate against anyone in connection with the award and performance of any contract on the basis of race, color, sex, or national origin.

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

DBE Program Updates (Part 26.21)

As authorized, the Department will continue to carry out this program until all funds from USDOT financial assistance have been expended. The Department will provide to USDOT updates representing significant changes in the program.

Quotas (Part 26.43)

The Department does not use quotas in any way in the administration of this DBE Program.

DBE Liaison Officer (DBELO) (Part 26.25)

The Department has designated the following individual as the DBE Liaison Officer (DBELO): Arthur E. Wright, Manager, Equal Opportunity Office, 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4747, arthur.wright@dot.state.fl.us. In that capacity, Mr. Wright is responsible for implementing all aspects of the DBE Program and ensuring that the Department complies with all provisions of 49 CFR Part 26. Mr. Wright has direct, independent access to the Secretary of the Florida Department of Transportation concerning DBE Program matters. The Equal Opportunity Office has two sections responsible for administration: DBE Program and Compliance and Investigations. The organization chart displaying the DBELO's position in the organization is found in **Attachment 2** to this Program Plan.

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

1. Gather and report statistical data and other information as required by USDOT;
2. Work with the Department's Office of the General Counsel as required in

3. reviewing certification decisions and compliance with this program;
3. Work with all departments and districts in achievement of the Department's overall annual goal;
4. Ensure that DBEs are aware of procurement opportunities;
5. Develop policies and procedures related to the DBE Program;
6. Analyze the Department's progress toward goal attainment and identify new and innovative methods to achieve the DBE goal in a race neutral environment;
7. Advise the Secretary of the Department and the Department's Executive Committee on matters impacting DBE policy and achievement;
8. Ensure that DBEs are provided information and assistance in preparing bids, obtaining bonding and insurance;
9. Ensure that DBEs receive training in one-on-one basis or classroom setting;
10. Certify DBEs according to the criteria set by USDOT and is the lead agency for the Florida Uniform Certification Program;
11. Ensure that outreach is provided to DBEs and community organizations to advise them of contracting opportunities;
12. Maintain the Department's updated directory of certified DBEs;
13. Provide guidance and technical assistance to the District Contract Compliance Managers and other district personnel;
14. Maintain current information on regulations and laws concerning compliance with Federal and State DBE programs;
15. Act as a liaison between the Department, the Federal Highway Administration (FHWA) and contractors in compliance matters;
16. Provide assistance to the contractors and consultants relative to the DBE Program; and
17. Monitor district activities related to the DBE Program.
18. Supervise the statewide administration of the Equal Opportunity Contract Compliance Program that includes the DBE Program;
19. Ensure that DBEs are provided with information and assistance in preparing bids, obtaining bonds, financial assistance and insurance;
20. Administer and coordinate the Department's DBE Supportive Service Program providing assistance in the form of managerial and technical training and outreach to DBEs and community organizations; and

The DBE Program Manager is responsible for the following duties with respect to administration of the DBE program:

1. Develop processes and procedures for gathering and reporting statistical data and other information as required by USDOT and the Department;
2. Produce monthly reports to the Executive Board, reports on contractors/consultants and other reports as necessary;
3. Market the DBE Program to contractors and consultants and work with others in the transportation industry;
4. Plan and participate in DBE training seminars and workshops;

5. Maintain the Department's updated directory of certified DBEs;
6. Serve as a liaison with DBEs and prime contractors;
7. Ensure all applications for DBE certification are timely processed pursuant to 49 CFR Part 26;
8. Develop policies, procedures, rules and guidelines for DBE certification;
9. Review all DBE applications, coordinate with others as necessary, and make recommendations to the Manager, Equal Opportunity Office concerning certification of applicants as DBEs;
10. Timely assign DBE applications to the DBE Certification staff and coordinate on site reviews;
11. Timely review Personal Net Worth Statements and gross receipts, evaluate a firm's continued eligibility to participate in the DBE Program, and make recommendations to the Manager, Equal Opportunity Office to commence removal proceedings if the firm no longer satisfies eligibility criteria;
12. Timely notify certified DBEs to submit updated size standard, gross receipts and personal net worth statements annually on the anniversary date of the firm's initial certification as a DBE;
13. Coordinate with the Department's Office of General Counsel on all DBE certification hearings; and
14. Supervise the DBE Certification staff and provide guidance on certification issues.
15. Forward all 3rd party complaints to the Investigations and Compliance Manager and take the necessary steps as a result of the investigation.
16. Cooperate with the USDOT operating administration when directed to initiate proceedings to remove certification.

Federal Financial Assistance Agreement Assurance (Part 26.13)

The Department and all subrecipients will sign the following assurance, applicable to all USDOT-assisted contracts and their administration.

The Department 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 recipient shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT- assisted contracts. The recipient's DBE Program, as required by 49 CFR part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the Department of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This assurance is stated in Section 10.00 of the Local Agency Program Agreement that can be found in **Attachment 3** to this Program Plan. In addition to this assurance, the

Department has developed a Local Agency Program Manual that can be found in **Attachment 4** of this Program Plan that provides additional guidance to local agencies regarding the DBE Program.

DBE Financial Institutions

It is the policy of the Department to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on USDOT-assisted contracts to make use of these institutions. Currently, the Florida Unified Certification Program does not have any certified DBE financial institutions. The following are other financial institutions that are believed to be owned and controlled by socially and economically disadvantaged individuals. The various supportive services providers that work with the Department will provide this information to DBEs.

Continental National Bank of Miami

Contact: Rolando Mollinedo, VP & Accounting Manager
1801 Southwest First Street
Miami, FL 33135
Routing and Transit (ABA) Number: 066009456
Phone: (305) 643-8254
Fax: (305) 643-8258

Great Eastern Bank of Florida

Contact: Richard Berdy, EVP, COO & CFO
4601 Northwest 72nd Avenue
Miami, FL 33166
Routing and Transit (ABA) Number: 067014071
Phone: (305) 716-9000
Fax: (305) 716-9721

Interamerican Bank

Contact: Augustin F. Velasco, CEO
9190 Coral Way
Miami, FL 33165
Routing and Transit (ABA) Number: 267087769
Phone: (305) 223-1434
Fax: (305) 223-0865

BankUnited

Contact: Ricardo J. Garcia
7970 NW 36 Street
Mail Code: NB-039
Doral, Fl. 33166
Phone: (305) 592-6641
Fax: (305) 698-4282

Directory (Part 26.31)

The Department maintains a Directory identifying all firms eligible to participate as DBEs. The Directory lists the firm's name, address, telephone number, email address, and the type of work the firm has been certified to perform as a DBE. The DBE Directory is updated daily by the Department and other Florida Unified Certification Program certifying members and is available on the internet at: <https://www3.dot.state.fl.us/EqualOpportunityOffice/biznet/mainmenu.asp>. Certifying members are required to update the DBE Directory within three days of a certification decision. The Directory can be sorted by NAICS code, specialty code, work location and physical location. Interested parties may contact the Equal Opportunity Office at 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4747 to obtain a current copy of the DBE Directory.

Overconcentration (Part 26.33)

The Department reviews the potential for overconcentration through various reports. Should the Department identify overconcentration, it will:

- Discuss the issue with the FHWA for possible strategies;
- Continue to monitor and develop new reports to help quantify the areas of overconcentration;
- Discuss the issue with the consultant or construction community to voluntarily reduce the overconcentration and to seek their recommendations;
- Consider the use of incentives that could reduce the overconcentration if other strategies were unsuccessful.

Fostering Small Business Participation (Part 26.39)

Due to the rising prices in bids and limited competition between 2003 thru 2005, the Department created a pilot program, called the Business Development Initiative (BDI) that would cultivate small businesses to have the ability to bid as a prime. This initiative is intended to fulfill the Department's long term goal of growing small businesses, increasing competition, lowering prices and supporting the contracting needs over the next 10 years. The intent of the Initiative is to provide more opportunities and support

for small businesses to move from subcontracting and subconsulting to prime contracting and consulting roles.

To be eligible to participate in the BDI, the firm must:

1. Meet the small business definition as defined by USDOT 49 CFR Part 26.65.
2. Submit a notarized affidavit on a form provided by the Department attesting to meeting the definition of a small business.
3. Provide a listing of contracts on which the firm has performed either as a prime or subcontractor or subconsultant.

Due to the size standards being the same as the USDOT size standards, all Florida UCP DBE certified firms are eligible to participate in the BDI. Some of the strategies used that would provide an opportunity for businesses who would not typically bid on Department contracts are:

- Reserve construction, maintenance, and professional services projects for small businesses and offer assistance to firms with little or no experience of working with the Department as a prime.
- Modify the prequalification requirements for projects between \$250,000 and \$500,000.
- Waive bonding requirements for non-critical projects under \$250,000 and/or reduce bid bond amount.
- Reserve professional services contracts under \$500,000 for small businesses on federally funded and state funded contracts.
- Revise liability insurance requirements.
- Reduce cost of Construction Training Qualification Program courses for small businesses.

The Equal Opportunity Office will continue to monitor the program by:

- Updating the BDI list of projects on a monthly basis,
- Educating and encouraging the use of the BDI to include LAP contracts,
- Encouraging the districts to identify additional contracts that can be reserved for small businesses and
- Providing updates on the progress of the program to the Executive Board.

The BDI has been successful in assisting small firms to become a prime and in growing their business to eventually compete on larger contracts. Also, the BDI has been instrumental in creating much needed jobs as stated by this unsolicited response:

“This program has been of great importance to our firm. We were fortunate enough to win one project with FDOT and one other project with another governmental agency that have made a real difference. These projects provided us with the ability to expand

our firm and hire several employees and create some much needed jobs in our community. We urge you to continue and hopefully grow this program in order to provide firms like ours a real opportunity for competing and creating the much needed jobs.”-Fursan S. Munjed, P.E. Pegasus Engineering, LLC

Required Contract Clauses (Part 26.13, 26.29)

Contract Assurance

The Department will ensure that the following clause is placed in every USDOT-assisted contract and subcontract:

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

This contractual clause is included in Section 7-24.2 of the Department’s Standard Specification for Road and Bridge Construction and can be found in **Attachment 5** of this Program Plan.

Prompt Payment

The Department complies with 49 CFR Part 26.29 of the federal regulations regarding prompt payment to all subcontractors. Prior to receiving payment, the Department requires prime contractors to certify that all subcontractors, with the exception of those noted by the contractor as not having been paid for good cause, have received their pro rata share of all previous periodic payments made to date by the Department for all work, materials and equipment furnished under the contract. A false statement or omission made in connection with this certification is sufficient cause for suspension, revocation, or denial of qualification to bid, and a determination of non-responsibility, and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable Federal and State Law. See **Attachment 6** for this certification form. These monthly certifications must be submitted monthly and on the average result in estimates being paid by the Department within 7 days. Under these contractual requirements, subcontractors will be paid within 30 days from receipt of each monthly payment to the prime contractor. The contractual provisions for prompt payment can be found in **Attachment 7** of this Program Plan. These provisions also require the prime contractor to make final payments to their subcontractors within 30 days of being paid by the Department.

As part of the Quality Assurance Review process, the Equal Opportunity Office will include a review of the prompt payment provisions to ensure compliance of these requirements. This review will consist of randomly selecting federally funded contracts to review payments to subcontractors. The Department's Office of Inspector General will also include a review of prompt payment in their review of construction contracts.

The Department will also work with the industry and periodically provide notices to both DBEs and to contractors reminding them of prompt payment responsibilities, the penalty for false statements and how to report a prompt payment issue.

Retainage

The Department complies with 49 CFR Part 26.29 (b) (2) and has a contractual provision (see 9-5.6 in Attachment 7) in its contracts with prime contractors which states that contractors will return retainage payment to all subcontractors within 30 days after the subcontractor's work has been deemed satisfactorily completed. Satisfactory completion will be determined by the Department.

Contract Requirements

In addition to the required contract clauses, the new DBE specifications provision that will be effective for lettings starting January 2011 also has a section on prompt payment and can be found in **Attachment 8** of this Program Plan.

In addition to prompt payment provisions, the DBE Specifications also requires the contractor to have a DBE Affirmative Action plan that expresses a commitment to use DBEs in all aspects of contracting to the maximum extent feasible and to describe their affirmative action methods. The specifications also provide detail guidance on how contractors count DBE participation and about the commercial useful function requirements. Along with the specifications, the Department also provides a DBE package to all who request plans for lettings that detail their responsibilities related to the DBE Program. This DBE package can be found in **Attachment 9** of this Program Plan. The Department has also developed a more detailed Equal Employment Opportunity (EEO) Construction Contract Compliance Manual for contractors' that details their EEO responsibilities as well as more detailed information about their responsibilities for the DBE Program. The chapter of this Manual pertaining to the DBE Program can be found in **Attachment 10** of this Program Plan or on the Department's Internet site at:

<http://www.dot.state.fl.us/equalopportunityoffice/ContractComplianceWorkbook.shtm> .

Monitoring and Enforcement Mechanisms (Section 26.37)

The Department will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in Section 26.109. The Department also will consider similar action under state legal authorities, including responsibility determinations in future contracts, removal of firms from the prequalified bidders and consultants' lists or revocation of DBE certification if applicable, pursuant to Section 337.105; 337.16; and 339.0805, Florida Statutes.

The Department monitors compliance with the DBE requirements through district construction staff and provides direction on how to monitor through the Equal Opportunity Construction Contract Compliance (EOCCC) procedure that can be found in **Attachment 11** of this Program Plan. The Department has also developed a Commercially Useful Function DBE Monitoring Report that is used by district staff to document and certify the Department's efforts to assess that DBE subcontractors are performing commercially useful functions. This form is included as **Attachment 12** of this Program Plan. The Department has revised the EOCCC procedure and some of the changes include increasing the frequency in DBE monitoring and delineating parameters and timeframes for compliance monitoring. The Department has implemented a DBE Trucking Ledger to track payments made to DBE subcontractors for DBE credit. A copy of this tool is included in **Attachment 13**. The DBE Trucking Ledger is required to substantiate DBE utilization and credit reported by prime contractors. The Department has selected to use Section 26.55 (d) (5) in counting DBE credit for trucking and has received approval from the local FHWA Division Office for this practice.

Lastly, the Department recognizes that ongoing staff training and professional development opportunities are essential in maintaining competent compliance professionals. The Equal Opportunity Office provides ongoing technical assistance and training to district and field staff regarding changes to state and federal regulations.

Overall Goals (Section 26.45)

The Department's DBE goal for federal fiscal years 2010 and 2011 was 8.18% and the proposed DBE goal for 2012-2014 is 8.60%. The Department's goal methodology can be found in **Attachment 14** of this Program Plan.

Contract Goals (Section 26.51)

The Department has successfully implemented a 100% race neutral DBE Program since federal fiscal year 2001. In accordance with Section 26.47 (c), should the Department project an inability to achieve the goal, it will submit a detailed analysis

and action plan to the US DOT operating administration. Should such a plan include the introduction of race conscious measures, the Department will consider use of the following methods:

- The Department would utilize preference points for subcontracting to DBEs on Design Build solicitations and other similar solicitations that are awarded based on a point system as opposed to the low bid process. This would allow 5% of the total points to be awarded if the proposer submits 8.60% (or the current overall DBE goal) DBE utilization in their proposal. Additional bonus points may also be awarded if the proposer exceeds the 8.60% DBE goal.
- The Department would impose contract goals only on those contractors or consultants that have historically showed very low DBE participation. This method would allow the contractors and consultants that have historically showed high DBE participation to continue to select those contracts and opportunities for DBE participation that best meet their needs. This approach would also provide the necessary incentive for contractors and consultants to increase and maintain a higher DBE participation. Those contractors and consultants with low DBE participation would be identified through the annual 'letter grades' that are based on their DBE participation on all contracts awarded throughout the federal fiscal year. Only those contractors or consultants receiving a 'D' or 'F' would have contract goals on contracts they are awarded.

If these two methods fail, the Department would use the traditional contract goal setting process to meet any portion of the overall goal which it does not project being able to meet using race and gender neutral means. The purpose of establishing contract goals is so that, over the period to which the overall goal applies, the goals will cumulatively result in meeting any portion of the overall goal that is not projected to be met through the use of race and gender neutral means.

In utilizing the goal setting method, the Department will establish contract goals only on those USDOT assisted contracts that have subcontracting possibilities. The Department need not establish a contract goal on every such contract, and the size of the contract goals will be adapted to the circumstances of each such contract. Factors which will be taken into consideration are type and location of work, availability of DBEs to perform that particular type of work and subcontracting opportunities on the contract. The Department will express the contract goal or potential goal as a percentage of the total amount of a USDOT assisted contract.

Good Faith Efforts (Section 26.53)

The Department treats bidder/proposers' compliance with good faith efforts requirements as a matter of responsiveness. However, under the Department's race neutral program a bid will not be rejected as non-responsive based on the percentage of DBE utilization. Bidders will, however, be required to submit anticipated DBE utilization information. The Department also requires contractors to submit for approval a DBE Affirmative Action Plan that expresses a commitment to use DBEs in all aspects of

contracting and to describe their affirmative action methods.

Each solicitation for which a contract goal has been established will require the bidders/proposers' to submit the following information within three days of the bid submission:

1. The names and addresses of DBE firms that will participate in the contract;
2. A description of the work that each DBE will perform;
3. The dollar amount of the participation of each DBE firm participation;
4. Written and signed documentation of commitment to use a DBE subcontractor whose participation it submits to meet a contract goal;
5. Written and signed confirmation from the DBE that it is participating in the contract as provided in the prime contractor's commitment;
and
6. If the contract goal is not met, evidence of good faith efforts.

Demonstration of good faith efforts

If a DBE goal is placed on a contract, the bidder/proposer must either meet the DBE goal or document the good faith efforts to meet the goal. Examples of good faith efforts are found in Appendix A to part 26.

The Department will ensure that all information is complete and accurate and adequately documents the bidder/proposer's good faith efforts before the Department commits to the performance of the contract by the bidder/proposer.

Administrative Reconsideration

Within 48 hours of determining whether good faith efforts have been met, the Equal Opportunity Office will notify the contractor of the initial finding and will further inform the contractor of the date, time and place of the Central Office Good Faith Efforts Reconsideration Committee meeting. A bidder/proposer may or may not choose to attend the meeting. Those bidders/proposers electing to attend the meeting may do so in person or by teleconference. The Good Faith Efforts Reconsideration Committee will review all good faith efforts findings. This Committee will be comprised of a Chairperson, appointed by the Director of Administration, the Manager of the Equal Opportunity Office, a representative from the Construction Office and two alternates. The Committee will make the final recommendation to the Technical Review Committee. The Technical Review Committee will follow its procedure in reviewing the recommendations regarding the project. The Award Committee will follow its procedure in reviewing the recommendations regarding the project.

Good Faith Efforts when a DBE is replaced on a contract

Where goal or preference points have been assigned to projects, the Department will require a contractor to make good faith efforts to replace a DBE that is terminated or has otherwise failed to complete its work on a contract with another certified DBE, to the extent needed to meet the contract goal. The Department will require the prime contractor or prime consultant to notify the District Contract Compliance Manager immediately of the DBE's inability or unwillingness to perform and provide reasonable documentation. Replacing a DBE because of the DBE's inability or unwillingness to perform or for any other reason requires the prior written consent of the District Contract Compliance Manager or other individuals as delegated by the appropriate District Secretary.

In this situation, the Department will require the prime contractor to obtain Department approval of the substitute DBE and to provide copies of new or amended subcontracts, or documentation of good faith efforts. If the contractor fails or refuses to comply in the time specified, the Department's contracting office will issue an order stopping all or part of payment/work until satisfactory action has been taken. If the contractor still fails to comply, the District Construction Engineer may issue a notice of default.

Counting DBE Participation (Part 26.55)

The Department will count DBE participation toward overall and contract specific goals as provided in 49 CFR Part 26.55. In a race neutral environment, the Department is requiring contractors to submit their Anticipated DBE Participation Statement at or before the preconstruction conference and consultants submit their DBE utilization with their Automated Fee Proposal. This Statement can be found in **Attachment 15** of this Program Plan. The Department is currently working on an internet based system that will allow contractors and consultants to submit their Anticipated DBE Participation Statements online. This system is expected to be operational in March 2012. For very large construction contracts that spread over multiple years, the Department may split up the contract dollars and the DBE participation for each year of the contract. In other contracts where a concessionaire is the prime contractor, the Department may allow the concessionaire to report their Anticipated DBE Participation Statement as they enter into contracts to perform the work. The Department requires contractors and consultants to provide updated information on their DBE utilization during the life of the contract. For changes made to DBE utilization in contracts that were previously reported to the FHWA, the Department will count that DBE participation during the current federal fiscal year.

Certification (Parts 26.61-26.91)

The Department will use the certification standards of Subpart D of Part 26 and the certification procedures of Subpart E of part 26 to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts.

To be certified as a DBE, a firm must meet all certification eligibility standards. The Department will make certification decisions based on the facts as a whole and will certify DBE firms by NAICS codes.

Process

The certification application form, documentation requirements and other certification information provided to the public are found in **Attachment 16** to this Program Plan. This documentation includes: a DBE Application Form, information on the Florida Unified Certification Program, instructions on where to submit the DBE application, a Personal Net Worth Statement, a Statement of Social Disadvantage, a Personal Net Worth Worksheet, a certification checklist, an Affidavit of Continued Eligibility.

For information about the certification process or to apply for certification, firms should contact: Arthur E. Wright, Manager, Equal Opportunity Office, 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4747; E-mail: arthur.wright@dot.state.fl.us or Vicki Smith, DBE Program Manager, 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4747, E-Mail: Victoria.smith@dot.state.fl.us.

In the event the Department proposes to remove a DBE's certification, the Department will follow procedures consistent with 49 CFR Part 26.87. To ensure separation of functions in a removal, the Department has determined that an Administrative Law Judge of the Division of Administrative Hearings (DOAH) will serve as the decision maker in removal proceedings which are contested by the DBE, pursuant to Chapter 120.57, Florida Statutes. The Department has established an administrative "firewall" to ensure that the Administrative Law Judge of the Division of Administrative Hearings will not have participated in any way in the decision to commence a removal proceeding against the firm. The Division of Administrative Hearings is a separate agency from the Department. Administrative Law Judges of the Division of Administrative Hearings are rotated on each case pending before it.

If the Department denies a firm's application, it may not reapply until twelve months have passed from the action.

Unified Certification Program

As required by 49 CFR Part 26.81, the Department and all other DOT recipients who certify DBEs participate in a Unified Certification Program. The Florida Unified Certification Program agreement was approved by the USDOT on March 25, 2004. The Agreement and subsequent Procedure Memorandums are found in **Attachment 17** of this Program Plan.

Effective January 1, 2012, the Florida UCP certifying members will process out-of-state applications in accordance with Section 26.85 (c) & (d).

Certification Appeals

Any firm or complainant may appeal the decision in a certification matter to the Department for referral of the matter to the Division of Administrative Hearings for resolution or to USDOT. Such appeals may be sent to:

Clerk of Agency Proceedings
Florida Department of Transportation
605 Suwannee Street, MS 58
Tallahassee, Florida 32399-0458

or

Department of
Transportation Office of Civil
Rights Certification Appeals
Branch 400 7th Street, SW,
Room 2104 Washington, DC
20590

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

DBEs may also appeal certification decisions to the Department and commence the administrative hearing process prescribed by Chapter 120.57, Florida Statutes, which is included in **Attachment 18** to this Program Plan. According to Chapter 120.57, Florida Statutes, a DBE may request a formal or informal administrative hearing if it decides to challenge a certification decision. The Department's Office of General Counsel treats all hearing requests from DBEs as requests for formal hearing and refers these requests to the Division of Administrative Hearings for an Administrative Law Judge to be assigned to and preside over the case. In the administrative hearing process, each party may present its case to the Administrative Law Judge and submit proposed recommended orders. The Administrative Law Judge enters a recommended order and each party may file objections to the recommended order. After considering the recommended

order and any objections to that order, the Secretary of the Florida Department of Transportation may accept or reject the recommended order as his Final Order. If the DBE disagrees with the Department's Final Order, it may appeal the Final Order to the First District Court of Appeal.

Affidavit of Continuing Eligibility

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

The Department will also require all owners of all DBEs certified by the Department to submit, on the anniversary date of their certification, an Affidavit of Continued Eligibility with supporting documentation. A copy of this Affidavit of Continued Eligibility is included in **Attachment 19** to this Program Plan.

The Department requires DBEs to submit this affidavit with documentation of the firm's size and gross receipts and updated Personal Net Worth Statements for each of the firm's Disadvantaged Owners.

The Department will notify all currently certified DBE firms of these obligations 90 days before the anniversary date of the firm's initial certification. This notification will inform DBEs that to submit the "no change" affidavit, their owners must swear or affirm that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

Notices of Change

If a certified DBE experiences a change in ownership affecting the 51 percent majority ownership and control of the firm by the disadvantaged owners on record with the Department, the DBE must submit a notice of this change to the Department. If the DBE fails to timely file this notice of change, the Department shall commence removal proceedings pursuant to 49 CFR Part 26.87.

A DBE shall also timely notify the Department of any change in address, telephone number, contact person for the firm, change in the firm's officers, or change in the firm's name so that the Department may properly update this information for its DBE Directory.

Information Collection and Reporting

Bidders List

The Department maintains a bidders list consisting of information about all DBE and non-DBE firms that bid or quote on FDOT contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. The bidders list will include the name, address, DBE/non-DBE status, age, and annual gross receipts of firms. A sample of the form is found in **Attachment 20** for manual submission by contractors and consultants. The Department collects this information through contract clauses, requiring all bidders to report the names and addresses of firms furnishing them quotes. The information is requested from all prime contractors and consultants within three days of their bid submission. They are also allowed to submit the information with their bids.

Monitoring Payments to DBEs

The Department requires all prime contractors and consultants to report monthly in the Department's Equal Opportunity Reporting System all payments made to DBEs and any retainage held. These requirements and instructions can be found in **Attachment 9** and other Attachments of this Program Plan. When contracts are closed, the actual payments to DBEs are included in the semi-annual report provided to the FHWA.

Confidentiality

The Department will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. Pursuant to Section 339.0805, Florida Statutes, all information submitted by applicant firms with their applications for certification and affidavits of continued eligibility, including their personal net worth statements, are confidential and exempt from the requirements of Florida's public records laws.