

City and County of San Francisco

London Breed
Mayor



Department of Human Resources

Carol Isen
Human Resources Director (Acting)

Date: December 18, 2020

To: The Honorable Civil Service Commission

Through: Carol Isen
Human Resources Director (Acting)

From: David Kashani, ENV
Karen Henderson, MYR
Amy Nuque, MTA
Cynthia Avakian, AIR
Henry Gong, SHF
Joan Lubamersky, ADM

Subject: **Personal Services Contracts Approval Request**

This report contains nine (9) personal services contracts (PSCs) in accordance with the revised Civil Service Commission (CSC) procedures for processing PSCs that became effective on November 5, 2014.

The services proposed by these contracts have been reviewed by Department of Human Resources (DHR) staff to evaluate whether the requesting departments have complied with City policy and procedures regarding PSCs. The proposed PSCs have been posted on the DHR website for seven (7) calendar days. CSC procedures for processing PSCs require that any appeal of these contracts be filed in the office of the CSC, Executive Officer during the posting period.

No timely appeals have been filed regarding the PSCs contained in this report. These proposed PSCs are being submitted to the CSC for ratification/approval.

DHR has prepared the following cost summary for personal services contracts that have been processed through the Department of Human Resources Fiscal Year 20/21 to date:

Total of this Report	YTD Expedited Approvals FY2020-2021	Total for FY2020-2021
\$39,496,017	\$86,074,748	\$903,900,912

David Kashani
Environment
1455 Market St., 12th Floor
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Mayor
1 South Van Ness Ave., 5th Floor
San Francisco, CA 94103
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Joan Lubamersky
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(415) 554-4859

Cynthia Avakian
Airport Commission
Contracts Administration Unit
P.O. Box 8097
San Francisco, CA 94128
(650) 821-2014

Table of Contents
PSC Submissions

Regular PSCs	Department	Page
42629 – 20/21	Environment	1
48561 – 20/21	Mayor	6
40108 – 20/21	Municipal Transportation Agency	11
47641 – 20/21	Airport Commission	15
 Modification PSCs		
49010 – 16/17	Airport Commission	25
44721 – 17/18	Sheriff	97
49622 – 18/19	Technology	107
40149 – 16/17	Municipal Transportation Agency	130
40301 – 18/19	City Administration	142

Published on *Personal Services Request Database* (<http://apps.sfgov.org/dhrdrupal>)

[Home](#) >

POSTING FOR

January 04, 2021

PROPOSED PERSONAL SERVICES CONTRACTS – REGULAR

Commission Hearing Date

APPLY

2021-01-04

PSC No	Dept Designation	PSC Amount	Description of Work	PSC Estimated Start Date	PSC Estimated End Date	Type of Approval
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The San Francisco Department of the Environment (ENV) is a member of Bay Area Regional Energy Network (BayREN). BayREN is a program administrator of California ratepayer funds under the auspices of the California Public Utilities Commission. ENV's role in BayREN is to lead the administration, implementation, and marketing of the BayREN Business energy efficiency rebate program. BayREN Business gives cash rebates

to contractors for the installation of energy efficient equipment in the nine counties Bay Area. As the lead, ENV must contract with a measurement and data-analytics company to track the effectiveness of the equipment over 24 months, and then calculate the eligible rebate amounts based on the tracking.

1) Measure energy consumption (in kilowatt-hour of and therms of natural gas) of the PG&E utility-meters for all projects enrolled in the BayREN Business energy efficiency rebate program.

2) Normalize the measurements against exogenous factors such as hourly weather conditions, and other factors approved as prescribed by CalTrack 2.0.

3) Calculate the rebate amounts based on the normalized measurements and notify ENV to issue payments to the

42629 - 20/21 ENVIRONMENT

\$372,300.00

December
15, 2020

December
21, 2023

REGULAR

project-installation
contractors.

4) Provide ENV with
energy savings
reports.

5) Provide ENV with
as-needed advice
and support to
recruit more
participants into the
BayREN Business
program.

The qualified firms
will provide technical
assistance and
capacity building
services (including
but not limited to
training programs,
individualized
coaching and
consulting, and/or
embedded support)
for nonprofit
organizations in the
areas of nonprofit
management,
research and data
analysis,
assessments, report
writing and
compilation,
financial
management,
governance,
leadership
development,
trauma-informed
systems, and racial
equity practices.

The proposed work
involves the design,
fabrication,

48561 - 20/21 MAYOR

\$2,500,000.00

October 1,
2020

October 1,
2025

REGULAR

			installation, and training for specialized machinery necessary to replace the Cable Car cables. In order to replace each of the four cables in the Cable Car system, two separate, specialized reeling machines are required. One machine functions as a rewinder unit in that it collects a damaged and/or old cable, and the other functions as a holdback in that it dispenses a new cable into the system while maintaining tension in the line during the cable replacement procedure.			
40108 - 20/21	MUNICIPAL TRANSPORTATION AGENCY	\$1,500,000.00		November 17, 2020	November 17, 2023	REGULAR
			Contractor will manage the San Francisco International Airport's (SFO or Airport) Curbside Management Program (CMP) for coordinating the Ground Transportation Operators (GTO) which include taxis, limousines and Transportation Network Companies (TNC). CMP staff will			

47641 - 20/21	AIRPORT COMMISSION	\$29,500,000.00	provide curbside assistance to passengers seeking door-to-door transportation. The CMP staff will monitor, coordinate and dispatch GTOs from the holding/staging areas; and provide administrative support for the CMP program and GTOs. Additionally, CMP staff are also responsible for reporting any GTOs for failing to comply with the Airport's procedures and/or rules and regulations which may result in a suspension of the driver from the program.	July 1, 2021	June 30, 2026	REGULAR
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TOTAL AMOUNT \$33,872,300

CSV

Posting For January 04, 2021

Proposed Modifications to Personal Services Contracts

Commission Hearing Date

APPLY

2021-01-04

PSC Number	Commission Hearing Date	Department	Additional Amount	Cumulative Total	Description	Start Date	End Date	Approval Type
49010 - 16/17 - MODIFICATIONS	January 4, 2021	AIRPORT COMMISSION -- AIR	\$300,000	\$600,000	<p>Contractor will provide consulting services for the San Francisco International Airport (SFO) Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs in compliance with Code of Federal Regulations (CFR) Title 49, Part 23 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl) and 26 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl), both attached to this request. Contractor will provide ACDBE certification and consulting services including: 1) ACDBE certification, 2) DBE/ACDBE reporting, 3) DBE/ACDBE goal setting, 4) DBE/ACDBE compliance monitoring.</p> <p>Install, configure, and implement a Jail Management System (JMS) software solution; along with software licenses, professional services, training, maintenance, and support. The JMS is required by SFSD to streamline and manage jail operations and inmate movements, automate booking and jail release functions, housing classification, and manage incarceration records.</p>	03/01/2021	02/28/2023	REGULAR
44721 - 17/18 - MODIFICATIONS	January 4, 2021	SHERIFF -- SHF	\$3,205,440	\$3,805,440	<p>Scope Change:</p> <p>The overall scope remains unchanged. The Sheriff's Office evaluation provided more detail to the business processes and functional requirements. The scope will include project initiation, business analysis and requirements definition, data migration analysis and planning, interface analysis and planning, functional design considerations, as well as a training framework/training plan.</p> <p>Vendor will install a Jail Management System (JMS) and to work with San Francisco Sheriff Department Information Technology Support Services Staff (ITSS) to configure a prototype of the Inmate Booking Module in JMS. This service shall include a subscription to use the JMS software in conjunction with the San Francisco Sheriff Department existing Microsoft Dynamic CRM licenses. The prototype would be used by San Francisco Sheriff Department in a non-production environment for the duration of the subscription (12 months) in order to confirm</p>	04/01/2021	03/31/2026	REGULAR

49622 - 18/19 - MODIFICATIONS	January 4, 2021	GENERAL SERVICES AGENCY - TECHNOLOGY -- TIS	\$618,277	\$1,118,277	that Vendor's JMS will meet the jail management system needs of San Francisco Sheriff Department. The scope, assumptions, and costs presented in this SOW represent Vendor proprietary experience and knowledge.	04/01/2021	03/31/2022	REGULAR
					A. Project Scope Vendor will work with San Francisco Sheriff Department to install Offender360 JMS and all technology components associated with the software in a non-production San Francisco Sheriff Department environment on their server hardware. Vendor will conduct a series of training workshops with San Francisco Sheriff Department Information Technology Staff to enable San Francisco Sheriff Department To make configuration changes to the standard JMS Booking module and develop a non-production prototype that meets the specific business requirements of San Francisco Sheriff Department for the booking process. Vendor will include in the services a 12 month subscription of the Offender360 JMS software to allow San Francisco Sheriff Department users to test the application in a non-production environment for up to 12 months. The result of this project will provide a prototype that will enable San Francisco Sheriff Department to validate and confirm that Offender360 will meet the jail management system needs of San Francisco Sheriff Department.			
					This consultant services contract will provide project and construction management support services for the Van Ness Corridor Transit Improvement Project, specifically: Primavera P6 schedule updates and analysis; risk and contingency program management and project and construction management support in compliance with Federal Transit Administration oversight principles and best practices; quality assurance management and assistance in compliance with Caltrans source inspection requirements/practices; construction management in Caltrans right of way construction; technical writing; office engineering support in electronic document management systems; inspection support for non-recurrent/as-needed critical path construction; cost estimating support; and contract administration/claims engineering support services.			
40149 - 16/17 - MODIFICATIONS	January 4, 2021	MUNICIPAL TRANSPORTATION AGENCY -- MTA	\$0	\$7,800,000		01/01/2021	06/30/2022	ADMINISTRATIVE APPROVAL
40301 - 18/19 - MODIFICATIONS	January 4, 2021	GENERAL SERVICES AGENCY - CITY ADMIN -- ADM	\$1,500,000	\$3,000,000	Services will include as-needed rental and cleaning of portable restrooms for City use at City construction worksites and City-sponsored events. The number and type of portable restrooms will vary. The need for the equipment may last from a day to a month, or more. Portable restrooms would be delivered to the needed sites. Janitorial services are needed to keep the equipment clean and functioning. These services include cleaning the rented, portable restrooms and wash stations, replacement of soap and paper products, removal of waste from the holding	07/01/2019	06/30/2022	REGULAR

tanks into a waste-receiving truck, and trucking the waste to a facility for proper disposal of the waste. The need for the services is unpredictable and depends on the number of worksites, users, and duration of the rental. For example, more portable restrooms would be required during summer months when more City constructions occur.

TOTAL AMOUNT \$5,623,717

Regular/Continuing/Annual Personal Services Contracts

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: ENVIRONMENT -- ENV

Dept. Code: ENV

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Software

Funding Source: Grant from BayREN (local)

PSC Amount: \$372,300

PSC Est. Start Date: 12/15/2020

PSC Est. End Date 12/21/2023

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The San Francisco Department of the Environment (ENV) is a member of Bay Area Regional Energy Network (BayREN). BayREN is a program administrator of California ratepayer funds under the auspices of the California Public Utilities Commission. ENV's role in BayREN is to lead the administration, implementation, and marketing of the BayREN Business energy efficiency rebate program. BayREN Business gives cash rebates to contractors for the installation of energy efficient equipment in the nine counties Bay Area. As the lead, ENV must contract with a measurement and data-analytics company to track the effectiveness of the equipment over 24 months, and then calculate the eligible rebate amounts based on the tracking.

1) Measure energy consumption (in kilowatt-hour of and therms of natural gas) of the PG&E utility-meters for all projects enrolled in the BayREN Business energy efficiency rebate program.

2) Normalize the measurements against exogenous factors such as hourly weather conditions, and other factors approved as prescribed by CalTrack 2.0.

3) Calculate the rebate amounts based on the normalized measurements and notify ENV to issue payments to the project-installation contractors.

4) Provide ENV with energy savings reports.

5) Provide ENV with as-needed advice and support to recruit more participants into the BayREN Business program.

B. Explain why this service is necessary and the consequence of denial:

This service is necessary because the crux of the BayREN Business is to use actual, quantified reduction in energy usage to calculate the resulting rebated. If this contract is denied, the BayREN Business program will shutdown, leaving hundreds of small-medium businesses without any means to reduce their utility overhead costs.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service has not been provided in the past. The BayREN Business program is the first energy efficiency program in the US to use metered results to calculate rebate for the small-medium business sector.

D. Will the contract(s) be renewed?

Possibly, based upon funding availability & need.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

The San Francisco Department of the Environment (ENV) is a member of Bay Area Regional Energy Network (BayREN). BayREN is a program administrator of California ratepayer funds under the auspices of the California Public Utilities Commission. ENV's role in BayREN is to lead the administration, implementation, and marketing of the BayREN Business energy efficiency rebate program. BayREN Business gives cash rebates to contractors for the installation of energy efficient equipment in the nine counties Bay Area. As the lead, ENV must contract with a measurement and data-analytics company to track the effectiveness of the equipment over 24 months, and then calculate the eligible rebate amounts based on the tracking. 1) Measure energy consumption (in kilowatt-hour of and therms of natural gas) of the PG&E utility-meters for all projects enrolled in the BayREN Business energy efficiency rebate program. 2)

Normalize the measurements against exogenous factors such as hourly weather conditions, and other factors approved as prescribed by CalTrack 2.0. 3) Calculate the rebate amounts based on the normalized measurements and notify ENV to issue payments to the project-installation contractors. 4) Provide ENV with energy savings reports. 5) Provide ENV with as-needed advice and support to recruit more participants into the BayREN Business program.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

☒ Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

The vendor has proprietary rights to the software used for the service.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Computer programming skills; expertise in providing utility-grade measurement verification services (+/-2%); expertise in integrating utility (PG&E) data into a software platform; experience with PG&E's third-party security review process; expertise in developing an electronic ledger to calculate eligible rebate amounts against measured, normalized utility data, expertise in normalizing exogenous effects into measure utility data, and knowledge on state-regulator's rules on energy efficiency programs.

B. Which, if any, civil service class(es) normally perform(s) this work? 1053, IS Business Analyst-Senior; 1063, IS Programmer Analyst-Senior;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

None, vendor has proprietary rights. Civil service classes are not authorized to issue an O.E.M (original equipment manufacturer)Certificate of Calibration. Any work performed by them would void warranty on the machines since technicians certified by the O.E.M. maintains the warranty

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Proprietary. Civil service classes are not applicable because this work cannot be performed by any of the classes.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, the nature of the work is proprietary.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Yes. The training familiarizes the user with accessing the proprietary software, the graphics interface, and its functionalities such as report generation, filtering energy usage data by time and locations, etc.; 2 hours per staffer; Environmental Assistants and Environmental Specialists.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. **Union Notification:** On 11/09/2020, the Department notified the following employee organizations of this PSC/RFP request:
Prof & Tech Eng, Local 21; Professional & Tech Engrs, Local 21

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: David Kashani Phone: 415-355-3704 Email: david.kashani@sfgov.org

Address: 1455 Market Street, 12th Floor San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 42629 - 20/21

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 01/04/2021

Receipt of Union Notification(s)

Kashani, David (ENV)

From: dhr-psccordinator@sfgov.org on behalf of david.kashani@sfgov.org
Sent: Monday, November 9, 2020 12:05 PM
To: Kashani, David (ENV); Laxamana, Junko (BOS); WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; pkim@ifpte21.org; amakayan@ifpte21.org; L21PSCReview@ifpte21.org; Kashani, David (ENV); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Notice for new PCS over \$100K PSC # 42629 - 20/21

RECEIPT for Union Notification for PSC 42629 - 20/21 more than \$100k

The ENVIRONMENT -- ENV has submitted a request for a Personal Services Contract (PSC) 42629 - 20/21 for \$372,300 for Initial Request services for the period 12/15/2020 – 12/21/2023. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/15710> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MAYOR -- MYR

Dept. Code: MYR

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Capacity building and technical assistance services for nonprofit organizations

Funding Source: City General Fund

PSC Amount: \$2,500,000

PSC Est. Start Date: 10/01/2020

PSC Est. End Date 10/01/2025

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The qualified firms will provide technical assistance and capacity building services (including but not limited to training programs, individualized coaching and consulting, and/or embedded support) for nonprofit organizations in the areas of nonprofit management, research and data analysis, assessments, report writing and compilation, financial management, governance, leadership development, trauma-informed systems, and racial equity practices.

B. Explain why this service is necessary and the consequence of denial:

It is imperative that the department provide capacity building services so grantees have the ongoing support necessary to meet the needs of city residents. Our department's lone compliance analyst does not have the capacity and necessary skills to cover the high volume of individual organizational needs. An array of expertise, as well as an external assessment of these organizations, is needed to support MOHCD's efforts to build nonprofit capacity, sustain programs, and comply with contracting standards. Denial of service would mean that many grassroots and smaller nonprofit organizations that serve high-need and under-represented populations may not have the available tools to build their capacity and ensure service delivery into the future.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service had not been provided consistently in the past. As the City has more closely monitored its nonprofit contractors, it has come to our attention that they need technical and capacity building support.

D. Will the contract(s) be renewed?

Yes

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

☒ Other (be specific and attach any relevant supporting documents):

REASON FOR CHECKING OTHER:

No, qualified consultant must have several years of experience providing capacity building services, including experience working with government staff and nonprofit organizations. This will include expertise in at least one area of nonprofit management, as well as in facilitation and/or providing coaching, technical assistance workshops and/or trainings.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: A qualified consultant must have several years of experience providing capacity building services, including experience working with government staff and nonprofit organizations. This will include expertise in at least one area of nonprofit management, as well as in facilitation and/or providing coaching, technical assistance workshops and/or trainings.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain:

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

This is a very specialized set of skills and expertise not currently available through Civil Service positions.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

This is a very specialized set of skills and expertise not currently available through Civil Service positions.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. The contractor will help the department identify MOHCD-funded nonprofit contractors who are ready and needing of capacity building services, but over time, the demand for this level of technical assistance will fluctuate. As such, this skill set is not needed on a consistent or long-term basis as a Civil Service position.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.

No. We estimate that the consultants will provide one training per month, at 3 hours of training per month. The occupation of attendees are nonprofit staff which includes nonprofit Executive Directors, financial management staff, and program staff. The occupation of the consultant staff are varied: financial management experts, organizational development professionals, other relevant expertise most relevant to MOHCD nonprofit grantees.

C. Are there legal mandates requiring the use of contractual services?

No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

No.

7. Union Notification: On 08/28/2020, the Department notified the following employee organizations of this PSC/RFP request:

all unions were notified

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Karen Henderson Phone: 701-5557 Email: karen.henderson@sfgov.org

Address: 1 South Van Ness Avenue, 5th floor San Francisco, CA

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48561 - 20/21

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 01/04/2021

Receipt of Union Notification(s)

Choi, Suzanne (HRD)

From: DHR-PSCCoordinator, DHR (HRD)
Sent: Thursday, December 10, 2020 10:10 AM
To: 'ramonliuna261@gmail.com'; 'laborers261@gmail.com'
Subject: Receipt of Notice for new PCS over \$100K PSC # 48561 - 20/21

FYI

-----Original Message-----

From: dhr-psccordinator@sfgov.org <dhr-psccordinator@sfgov.org> On Behalf Of karen.henderson@sfgov.org
Sent: Friday, August 28, 2020 3:44 PM
To: Henderson, Karen (MYR) <karen.henderson@sfgov.org>; emathurin@cirseiu.org; abush@cirseiu.org; sbabaria@cirseiu.org; anthony@dc16.us; mlobre@sfpoa.org; tony@sfpoa.org; tracym@sfpoa.org; mleach@ibt856.org; rooferslocal40@gmail.com; sal@local16.org; Criss@SFMEA.com; Meyers, Julie (HSA) <Julie.Meyers@sfgov.org>; seichenberger@local39.org; camaguey@sfmea.com (contact) <camaguey@sfmea.com>; ablood@cirseiu.org; kcartermartinez@cirseiu.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; sarah.wilson@seiu1021.org; kschumacher@ifpte21.org; kpage@ifpte21.org; tjenkins@uapd.com; eerbach@ifpte21.org; tmathews@ifpte21.org; amakayan@ifpte21.org; jb@local16.org; Ricardo.lopez@sfgov.org; Basconcillo, Katherine (PUC) <kbasconcillo@sfgwater.org>; Sandeep.lal@seiu1021.me; pcamarillo_seiu@sbcglobal.net; MRainsford@local39.org; Wendy.Frigillana@seiu1021.org; pscreview@seiu1021.org; pkim@ifpte21.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; gail@sffdlocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmialocal300.org; ramonliuna261@gmail.comnet; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; xiumin.li@seiu1021.org; Poon, Sin Yee (HSA) <sin.yee.poon@sfgov.org>; smcgarry@nccrc.org; rmitchell@twusf.org; grojo@local39.org; jduritz@uapd.com; staff@SFMEA.com; mike@dc16.us; khughes@ibew6.org; L21PSCReview@ifpte21.org; sfsmsa@gmail.com; bart@dc16.us; david.canham@seiu1021.org; jtanner940@aol.com; oashworth@ibew6.org; L21PSCReview@ifpte21.org; LiUNA.local261@gmail.com; local200twu@sbcglobal.net; speedy4864@aol.com; Christina@SFMEA.com; ecdemvoter@aol.com; thomas.vitale@seiu1021.org; Henderson, Karen (MYR) <karen.henderson@sfgov.org>; DHR-PSCCoordinator, DHR (HRD) <dhr-psccordinator@sfgov.org>
Subject: Receipt of Notice for new PCS over \$100K PSC # 48561 - 20/21

RECEIPT for Union Notification for PSC 48561 - 20/21 more than \$100k

The MAYOR -- MYR has submitted a request for a Personal Services Contract (PSC)

48561 - 20/21 for \$2,500,000 for Initial Request services for the period 10/01/2020 – 10/01/2025. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrdrupal/node/15472> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTA

Dept. Code: MTA

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Cable Car Barn Rewinder & Holdback Replacement

Funding Source: Federal and Local Funds

PSC Duration: 3 years

PSC Amount: \$1,500,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

The proposed work involves the design, fabrication, installation, and training for specialized machinery necessary to replace the Cable Car cables. In order to replace each of the four cables in the Cable Car system, two separate, specialized reeling machines are required. One machine functions as a rewinder unit in that it collects a damaged and/or old cable, and the other functions as a holdback in that it dispenses a new cable into the system while maintaining tension in the line during the cable replacement procedure.

B. Explain why this service is necessary and the consequence of denial:

The Cable Car Holdback and Rewinder machines are necessary for the replacement of the cables that provide traction power to the historic Cable Car rail vehicles. The current machinery was furnished in the 1980's and has experienced unexpected issues in recent years. The Cable Car system relies solely on these machines to perform cable replacements. Were the holdback or rewinder to experience unexpected breakdown due to the age of the machinery, the system would be facing an extended shutdown as it would be without the equipment necessary to address the cable damage and age that would require cable replacement. Therefore, the machines should be replaced.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

A contractor was hired to design, fabricate, and install the current cable replacement machinery in the 1980's.

D. Will the contract(s) be renewed?

No

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

☒ Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

B. Explain the qualifying circumstances:

The project work requires the services of a contractor experienced with the design, fabrication, installation, and training of wire rope reeling machines. The work entails specialized engineering and installation of a modern wire rope reeling machine to replace machinery that is highly impactful to the operation of the Cable Car system and has outlived its useful life.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Wire Rope Reeling Machine Engineering, Hydraulic Engineering, and Electromechanical Engineering

- B. Which, if any, civil service class(es) normally perform(s) this work? none
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Two new reeling machines and related items to be used for Cable Car cable replacement.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

The city and County of San Francisco do not have qualified personnel to perform the work needed for this project.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
Civil service classes do not perform such specialized work as wire rope reeling machine design.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. The work is highly specialized and does not represent work that would be consistently performed on a daily basis, but rather represents project work to be performed very roughly once every 5-25 years.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Yes. Estimated 16 hours of training on the operation and maintenance of the new reel in reeling machines. The occupational types of employees expected to be trained are primarily Engineering, Supervision, Wire Rope Mechanics, Machinists, Electronic Maintenance Tech Technicians.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 11/03/2020, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 S Van Ness Ave, HR ELR, 6th San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 40108 - 20/21

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 01/04/2021

Receipt of Union Notification(s)

Choi, Suzanne (HRD)

From: DHR-PSCCoordinator, DHR (HRD)
Sent: Thursday, December 10, 2020 12:11 PM
To: 'laborers261@gmail.com'; 'ramonliuna261@gmail.com'
Cc: Nuque, Amy (MTA)
Subject: FW: Receipt of Notice for new PCS over \$100K PSC # 40108 - 20/21

-----Original Message-----

From: dhr-psccordinator@sfgov.org <dhr-psccordinator@sfgov.org> On Behalf Of amy.nuque@sfmta.com
Sent: Tuesday, November 3, 2020 2:31 PM
To: Nuque, Amy (MTA) <Amy.Nuque@sfmta.com>; Laxamana, Junko (BOS) <junko.laxamana@sfgov.org>; jennifer.esteen@seiu1021.org; emathurin@cirseiu.org; abush@cirseiu.org; sbabaria@cirseiu.org; anthony@dc16.us; mlobre@sfpoa.org; tony@sfpoa.org; tracym@sfpoa.org; mleach@ibt856.org; rooferslocal40@gmail.com; sal@local16.org; Criss@SFMEA.com; Meyers, Julie (HSA) <julie.meyers@sfgov.org>; seichenberger@local39.org; camaguey@sfmea.com (contact) <camaguey@sfmea.com>; ablood@cirseiu.org; kcartermartinez@cirseiu.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; sarah.wilson@seiu1021.org; kschumacher@ifpte21.org; kpage@ifpte21.org; tjenkins@uapd.com; eerbach@ifpte21.org; tmathews@ifpte21.org; amakayan@ifpte21.org; jb@local16.org; Ricardo.lopez@sfgov.org; Basconcillo, Katherine (PUC) <kbasconcillo@sfgwater.org>; Sandeep.lal@seiu1021.me; pcamarillo_seiu@sbcglobal.net; MRainsford@local39.org; Wendy.Frigillana@seiu1021.org; pscreview@seiu1021.org; pkim@ifpte21.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; gail@sffdlocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmialocal300.org; ramonliuna261@gmail.comnet; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; xiumin.li@seiu1021.org; Poon, Sin Yee (HSA) <sin.yee.poon@sfgov.org>; smcgarry@nccrc.org; rmitchell@twusf.org; grojo@local39.org; jduritz@uapd.com; staff@SFMEA.com; mike@dc16.us; khughes@ibew6.org; L21PSCReview@ifpte21.org; sfsmsa@gmail.com; bart@dc16.us; david.canham@seiu1021.org; jtanner940@aol.com; oashworth@ibew6.org; L21PSCReview@ifpte21.org; LiUNA.local261@gmail.com; local200twu@sbcglobal.net; speedy4864@aol.com; Christina@SFMEA.com; ecdemvoter@aol.com; thomas.vitale@seiu1021.org; Nuque, Amy (MTA) <Amy.Nuque@sfmta.com>; DHR-PSCCoordinator, DHR (HRD) <dhr-psccordinator@sfgov.org>
Subject: Receipt of Notice for new PCS over \$100K PSC # 40108 - 20/21

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

RECEIPT for Union Notification for PSC 40108 - 20/21 more than \$100k

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a request for a Personal Services Contract (PSC) 40108 - 20/21 for \$1,500,000 for Initial Request services for the period 11/17/2020 – 11/17/2023. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<https://avanan.url-protection.com/v1/url?o=http%3A//apps.sfgov.org/dhrdrupal/node/15692&g=NGQzMjU3MjFmYjQyZDYwMA==&h=Y2Y>

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION -- AIR

Dept. Code: AIR

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Curbside Management Program

Funding Source: Airport Operating Funds

PSC Amount: \$29,500,000

PSC Est. Start Date: 07/01/2021

PSC Est. End Date 06/30/2026

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Contractor will manage the San Francisco International Airport's (SFO or Airport) Curbside Management Program (CMP) for coordinating the Ground Transportation Operators (GTO) which include taxis, limousines and Transportation Network Companies (TNC). CMP staff will provide curbside assistance to passengers seeking door-to-door transportation. The CMP staff will monitor, coordinate and dispatch GTOs from the holding/staging areas; and provide administrative support for the CMP program and GTOs. Additionally, CMP staff are also responsible for reporting any GTOs for failing to comply with the Airport's procedures and/or rules and regulations which may result in a suspension of the driver from the program.

B. Explain why this service is necessary and the consequence of denial:

The CMP is necessary to manage the curbside operations accessed by arriving air passengers using this service for departures from the Airport. Denial will eliminate the Airport's primary ground transportation management program and will result in chaotic conditions at the loading zones due to the competitive nature of the GTO industry. This program needs to be managed by an independent third-party so that Airport employees can serve as adjudicators in any dispute between GTOs and the CMP contractor. Without the program the Airport loses its required impartiality for the violation hearings.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service has been provided mostly recently through PSC 48936-15/16.

D. Will the contract(s) be renewed?

Yes, if there continues to be a need for this service at SFO.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

This PSC is requested for a term of five years to match the contract that the Airport seeks to enter into.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

☒ Circumstances where there is a demonstrable potential conflict of interest (e.g., independent appraisals, audits, inspections, third party reviews and evaluations).

B. Explain the qualifying circumstances:

The Airport is not able to fluctuate staffing during peak travel periods and special events, as the contractor is able to do. Additionally, the CMP needs to be operated independent of the Airport to avoid a potential conflict of interest during violation hearings. Additionally,

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: The ability to monitor and maintain multiple holding/staging/waiting areas

for GTOs and to estimate the need for vehicles through the entire service day which ranges from 6am - 1am. Curbside dispatching capabilities include reporting and system management functions for GTOs are required to manage supply and passenger demands accurately while minimizing disruption to Airport curbside loading and roadways. Excellent customer service skills are needed to assist arriving passengers with GTOs and deal with GTO drivers tactfully.

B. Which, if any, civil service class(es) normally perform(s) this work? 5290, Transportation Planner IV; 9135, Passenger Service Specialist ;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

None. Current classifications do not include curbside dispatch. The 9135 Passenger Service Specialist receives, acknowledges and responds to passenger and public complaints, inquiries and commendations from patrons similar to what the Curbside Coordinators are required to do. However, this is only one small component of the scope of work for the CMP. The type of work performed in this program requires intimate knowledge of Airport operations and monitoring, coordinating, and dispatching GTOs and there are no civil service classifications that meet all of the required scope of work for the CMP. For these reasons, the department has determined that these services cannot be provided by available City resources.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Civil Service classes are not applicable because it is important that the CMP be operated independent of the Airport so that Airport employees can serve as adjudicators in any dispute between GTOs and the CMP contractor. The closest civil service classification to this program would be the 9135, Passenger Service Specialist. However, the 9135 work does not apply here because the job specifications only match the passenger interaction portion of the requested services but does not match the curbside work. The CMP is a highly competitive program where the CMP staff must manage passenger loading zones, staging areas, and ensure the drivers are following the rules and regulations. The 5290, Transportation Planner IV, is the classification that will manage the contract for the Airport.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, not at this time.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No. There will be no training provided as part of these services.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 11/09/2020, the Department notified the following employee organizations of this PSC/RFP request:

Professional & Tech Engrs, Local 21; Transport Workers Union, L 200

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS

COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: P.O Box 8097 San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 47641 - 20/21

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 01/04/2021

Receipt of Union Notification(s)

From: dhrrpscordinator@sfgov.org on behalf of cynthia.avakian@flysfso.com
To: [Cynthia Avakian \(AIR\)](#); local200twu@sbcglobal.net; [Laxamana, Junko \(BOS\)](#); WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; pkim@ifpte21.org; L21PSCReview@ifpte21.org; [Annyse Acevedo \(AIR\)](#); [DHR-PSCCoordinator, DHR \(HRD\)](#)
Subject: Receipt of Notice for new PCS over \$100K PSC # 47641 - 20/21
Date: Monday, November 9, 2020 5:39:51 PM

RECEIPT for Union Notification for PSC 47641 - 20/21 more than \$100k

The AIRPORT COMMISSION -- AIR has submitted a request for a Personal Services Contract (PSC) 47641 - 20/21 for \$29,500,000 for Initial Request services for the period 07/01/2021 – 06/30/2026. Notification of 30 days (60 days for SEIU) is required.

After logging into the system please select link below, view the information and verify receipt:

<http://apps.sfgov.org/dhrrupal/node/15592> For union notification, please see the TO: field of the email to verify receipt. If you do not see all the unions you intended to contact, the PSC Coordinator must change the state back to NOT

READY, make sure the classes and unions you want to notify are selected and SAVE. Then VIEW the record and verify the list of unions and emails. EDIT the document again , change the state back START UNION NOTIFICATION and SAVE. You should receive the email with all unions to the TO: field as intended

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSIONDept. Code: AIRType of Request: ☐ Initial ☒ Modification of an existing PSC (PSC # 48936 - 15/16)Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)Type of Service: Curbside Management ProgramFunding Source: Airport Operating FundsPSC Original Approved Amount: \$27,000,000PSC Original Approved Duration: 06/01/16 - 12/31/21 (5 years 30 weeks)PSC Mod#1 Amount: \$13,500,000PSC Mod#1 Duration: no duration addedPSC Cumulative Amount Proposed: \$40,500,000PSC Cumulative Duration Proposed: 5 years 30 weeks**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

Contractor will manage the San Francisco International Airport's (SFO or Airport) Curbside Management Program (CMP) for coordinating the Ground Transportation Operators (GTO) which include taxis, limousines and Transportation Network Companies (TNC). CMP staff will provide curbside assistance to passengers seeking door-to-door transportation. Additionally, the CMP staff will monitor, coordinate and dispatch GTOs from the the holding/staging areas; and provide administrative support for the CMP program and GTOs.

B. Explain why this service is necessary and the consequence of denial:

The CMP is necessary to manage the curbside operations accessed by arriving air passengers using this service for departures from the Airport. In 2015, 25 million passengers arrived at SFO. CMP staff managed the orderly dispatch of 1.8 million taxicabs; monitored 1.2 million limousines, 3.2 million TNC trips and 1 million charter bus, shuttles and van trips. Denial will eliminate the Airport's primary ground transportation management program and will result in chaotic conditions at the loading zones due to the competitive nature of the GTO industry.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, this PSC 48936-15/16

D. Will the contract(s) be renewed?

Yes, as there continues to be a need for this service at SFO.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The term includes the anticipated 5-year term and additional months through the end of the calendar year to allow for any possible delays initiating the work.

2. Reason(s) for the Request**A. Display all that apply**

☒ Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

The Airport is also not able to fluctuate staffing with speed during peak travel periods and special events, as the contractor is able to do.

B. Reason for the request for modification:

This modification is to increase the current amount in order to accommodate the increased expenditures due to the additional staffing needed to relocate the Transportation Network Companies lots.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: An independent contractor who provides the ability to monitor and maintain multiple holding/staging/waiting areas for GTOs and to estimate the need for vehicles through the entire service day which ranges from 6am - 1am. Curbside dispatching capabilities including reporting and system management functions for GTOs are required to manage supply and passenger demands accurately while minimizing disruption to Airport curbside loading and roadways. Excellent customer service skills are needed to assist arriving passengers with GTOs and deal with GTO drivers tactfully.

B. Which, if any, civil service class(es) normally perform(s) this work? 9135, ;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

It is important for the CMP to be operated independent of the Airport so that Airport employees can serve as adjudicators in any dispute between GTOs and the CMP contractor. The 9135 staff could perform part of the work but could not perform the curbside work.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, the number of staff required to manage and monitor the CMP fluctuates frequently and is dependent upon arriving passenger load. Due to the short notice of fluctuating staff demand this would not justify creating a new civil service classification.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.

Not Applicable, There will not be training provided

C. Are there legal mandates requiring the use of contractual services?

No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

No.

7. Union Notification: On 11/06/19, the Department notified the following employee organizations of this PSC/RFP request:

Transport Workers Union, L 200;

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: P.O. Box 8097, San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 48936 - 15/16

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 11/22/2019

Modification

Personal Services Contracts

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION

Dept. Code: AIR

Type of Request: ☐ Initial ☒ Modification of an existing PSC (PSC # 49010 - 16/17)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Disadvantaged Business Enterprise (DBE) & Airport Concession DBE Consulting Services

Funding Source: Airport Operating Funds

PSC Original Approved Amount: \$300,000

PSC Original Approved Duration: 12/01/16 - 06/30/21 (4 years 30 weeks)

PSC Mod#1 Amount: \$300,000

PSC Mod#1 Duration: 03/01/21-02/28/23 (1 year 34 weeks)

PSC Cumulative Amount Proposed: \$600,000

PSC Cumulative Duration Proposed: 6 years 12 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Contractor will provide consulting services for the San Francisco International Airport (SFO) Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs in compliance with Code of Federal Regulations (CFR) Title 49, Part 23 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl) and 26 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl), both attached to this request. Contractor will provide ACDBE certification and consulting services including: 1) ACDBE certification, 2) DBE/ACDBE reporting, 3) DBE/ACDBE goal setting, 4) DBE/ACDBE compliance monitoring.

B. Explain why this service is necessary and the consequence of denial:

Per the CFR regulations listed above, SFO is required to operate and report on DBE and ACDBE programs, both of which align with the City's mission to ensure economic opportunities for disadvantaged businesses. The Federal Aviation Administration (FAA) and the Department of Transportation (DOT) Office of the Inspector General (OIG) have suggested improvements to these programs at SFO. If denied, SFO would be unable to fully develop and monitor the program and risk non-compliance with federal regulations.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, this PSC 49010-16/17

D. Will the contract(s) be renewed?

Yes, if there continues to be a need at SFO.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

Airport continues to have a need for the services in this contract and is exercising the first option to extend.

2. Reason(s) for the Request

A. Display all that apply

☒ Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

As stated earlier, specialized skills are required on an intermittent basis and does not warrant full-time staffing. Services depend greatly on new concessions, construction opportunities, and the availability of the state to support certifications. Required services are unpredictable in volume and inconsistent throughout the year. Examples of intermittent tasks include goal setting, conducted once every three years, and annual utilization reporting.

B. Reason for the request for modification:

Modification to increase PSC amount and duration to exercise contract extension

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Required expertise includes an in depth knowledge of, and experience with, Federal Regulations, DOT OIG practices, and with Airports enforcing compliance with CFR Title 49, Parts 23 and 26 (attached to this request).

B. Which, if any, civil service class(es) normally perform(s) this work? 1824, Pr Administrative Analyst;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Existing civil service classifications do not possess the required knowledge and compliance experience of enforcing Airport adherence to DBE and ACDBE CFRs.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No as the specialized expertise is required on an intermittent basis. Certain functions, such as the goal-setting task, is conducted once every three years, while utilization reporting is submitted annually. Services and funding are inconsistent, partially driven by DBE provisions from new eligible construction projects and also dependent on the amount of concession leasing.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
None. Services are intermittent & depend on new concession opportunities.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes, ACC Consulting LLC will continue to work on this contract.

7. Union Notification: On 11/23/20, the Department notified the following employee organizations of this PSC/RFP request:
Architect & Engineers, Local 21;

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfo.com

Address: PO Box 8097, San Francisco, CA 94128

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 49010 - 16/17

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 01/04/2021

Receipt of Union Notification(s)

Ricardo Valle (AIR)

From: dhr-psccordinator@sfgov.org on behalf of cynthia.avakian@flysfo.com
Sent: Monday, November 23, 2020 1:40 PM
To: Cynthia Avakian (AIR); ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; pkim@ifpte21.org; L21PSCReview@ifpte21.org; Ricardo Valle (AIR); DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 49010 - 16/17 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The AIRPORT COMMISSION -- AIR has submitted a modification request for a Personal Services Contract (PSC) for \$300,000 for services for the period March 1, 2021 – February 28, 2023. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<https://gcc01.safelinks.protection.outlook.com/?url=http%3A%2F%2Fapps.sfgov.org%2Fdhrdrupal%2Fnode%2F15742&data=04%7C01%7Cricardo.e.valle%40flysfo.com%7Ca7a5bb532cb14c665e8908d88ff96be1%7C22d5c2cfce3e443d9a7fdfcc0231f73f%7C0%7C0%7C637417648708821061%7CUnknown%7CTWFpbGZsb3d8eyJWljoIMC4wLjAwMDAiLCJQIjoiV2luMzliLCJBTiI6IklhaWwiLCJXVCi6Mn0%3D%7C1000&sdata=Vr4SLpCy6A5f0PpkbUHWzwTidElwZsiDu5I9LBg3SxQ%3D&reserved=0>

Email sent to the following addresses: L21PSCReview@ifpte21.org pkim@ifpte21.org eerbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com ecassidy@ifpte21.com

Additional Attachment(s)

ELECTRONIC CODE OF FEDERAL REGULATIONS

e-CFR data is current as of September 20, 2016[Title 49](#) → [Subtitle A](#) → [Part 23](#)

Title 49: Transportation

PART 23—PARTICIPATION OF DISADVANTAGED BUSINESS ENTERPRISE IN AIRPORT CONCESSIONS**Contents****Subpart A—General**

- §23.1 What are the objectives of this part?
- §23.3 What do the terms used in this part mean?
- §23.5 To whom does this part apply?
- §23.7 Program reviews.
- §23.9 What are the nondiscrimination and assurance requirements of this part for recipients?
- §23.11 What compliance and enforcement provisions are used under this part?
- §23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this part?

Subpart B—ACDBE Programs

- §23.21 Who must submit an ACDBE program to FAA, and when?
- §23.23 What administrative provisions must be in a recipient's ACDBE program?
- §23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?
- §23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?
- §23.29 What monitoring and compliance procedures must recipients follow?

Subpart C—Certification and Eligibility of ACDBEs

- §23.31 What certification standards and procedures do recipients use to certify ACDBEs?
- §23.33 What size standards do recipients use to determine the eligibility of ACDBEs?
- §23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?
- §23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?
- §23.39 What other certification requirements apply in the case of ACDBEs?

Subpart D—Goals, Good Faith Efforts, and Counting

- §23.41 What is the basic overall goal requirement for recipients?
- §23.43 What are the consultation requirements in the development of recipients' overall goals?
- §23.45 What are the requirements for submitting overall goal information to the FAA?
- §23.47 What is the base for a recipient's goal for concessions other than car rentals?
- §23.49 What is the base for a recipient's goal for car rentals?
- §23.51 How are a recipient's overall goals expressed and calculated?
- §23.53 How do car rental companies count ACDBE participation toward their goals?
- §23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?
- §23.57 What happens if a recipient falls short of meeting its overall goals?
- §23.59 What is the role of the statutory 10 percent goal in the ACDBE program?
- §23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?

Subpart E—Other Provisions

- §23.71 Does a recipient have to change existing concession agreements?
 - §23.73 What requirements apply to privately-owned or leased terminal buildings?
 - §23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?
 - §23.77 Does this part preempt local requirements?
 - §23.79 Does this part permit recipients to use local geographic preferences?
- Appendix A to Part 23—Uniform Report of ACDBE Participation

AUTHORITY: 49 U.S.C. 47107; 42 U.S.C. 2000d; 49 U.S.C. 322; Executive Order 12138.

SOURCE: 70 FR 14508, Mar. 22, 2005, unless otherwise noted.

[⤴ Back to Top](#)**Subpart A—General**[⤴ Back to Top](#)**§23.1 What are the objectives of this part?**

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of opportunities for concessions by airports receiving DOT financial assistance;
- (b) To create a level playing field on which ACDBEs can compete fairly for opportunities for concessions;
- (c) To ensure that the Department's ACDBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as ACDBEs;
- (e) To help remove barriers to the participation of ACDBEs in opportunities for concessions at airports receiving DOT financial assistance; and
- (f) To provide appropriate flexibility to airports receiving DOT financial assistance in establishing and providing

opportunities for ACDBEs.

[Back to Top](#)

§23.3 What do the terms used in this part mean?

Administrator means the Administrator of the Federal Aviation Administration (FAA).

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121, except that the provisions of SBA regulations concerning affiliation in the context of joint ventures (13 CFR §121.103(f)) do not apply to this part.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the ACDBE program.

Airport Concession Disadvantaged Business Enterprise (ACDBE) means a concession that is a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act (43 U.S.C. 1601 *et seq.*)

Car dealership means an establishment primarily engaged in the retail sale of new and/or used automobiles. Car dealerships frequently maintain repair departments and carry stocks of replacement parts, tires, batteries, and automotive accessories. Such establishments also frequently sell pickup trucks and vans at retail. In the standard industrial classification system, car dealerships are categorized in NAICS code 441110.

Concession means one or more of the types of for-profit businesses listed in paragraph (1) or (2) of this definition:

(1) A business, located on an airport subject to this part, that is engaged in the sale of consumer goods or services to the public under an agreement with the recipient, another concessionaire, or the owner or lessee of a terminal, if other than the recipient.

(2) A business conducting one or more of the following covered activities, even if it does not maintain an office, store, or other business location on an airport subject to this part, as long as the activities take place on the airport: Management contracts and subcontracts, a web-based or other electronic business in a terminal or which passengers can access at the terminal, an advertising business that provides advertising displays or messages to the public on the airport, or a business that provides goods and services to concessionaires.

Example to paragraph (2): A supplier of goods or a management contractor maintains its office or primary place of business off the airport. However the supplier provides goods to a retail establishment in the airport; or the management contractor operates the parking facility on the airport. These businesses are considered concessions for purposes of this part.

(3) For purposes of this subpart, a business is not considered to be "located on the airport" solely because it picks up and/or delivers customers under a permit, license, or other agreement. For example, providers of taxi, limousine, car rental, or hotel services are not considered to be located on the airport just because they send shuttles onto airport grounds to pick up passengers or drop them off. A business is considered to be "located on the airport," however, if it has an on-airport facility. Such facilities include in the case of a taxi operator, a dispatcher; in the case of a limousine, a booth selling tickets to the public; in the case of a car rental company, a counter at which its services are sold to the public or a ready return facility; and in the case of a hotel operator, a hotel located anywhere on airport property.

(4) Any business meeting the definition of concession is covered by this subpart, regardless of the name given to the agreement with the recipient, concessionaire, or airport terminal owner or lessee. A concession may be operated under various types of agreements, including but not limited to the following:

- (i) Leases.
- (ii) Subleases.
- (iii) Permits.
- (iv) Contracts or subcontracts.
- (v) Other instruments or arrangements.

(5) The conduct of an aeronautical activity is not considered a concession for purposes of this subpart. Aeronautical activities include scheduled and non-scheduled air carriers, air taxis, air charters, and air couriers, in their normal passenger or freight carrying capacities; fixed base operators; flight schools; recreational service providers (e.g., sky-diving, parachute-jumping, flying guides); and air tour services.

(6) Other examples of entities that do not meet the definition of a concession include flight kitchens and in-flight caterers servicing air carriers, government agencies, industrial plants, farm leases, individuals leasing hangar space, custodial and security contracts, telephone and electric service to the airport facility, holding companies, and skycap services under contract with an air carrier or airport.

Concessionaire means a firm that owns and controls a concession or a portion of a concession.

Department (DOT) means the U.S. Department of Transportation, including the Office of the Secretary and the Federal

Aviation Administration (FAA).

Direct ownership arrangement means a joint venture, partnership, sublease, licensee, franchise, or other arrangement in which a firm owns and controls a concession.

Good faith efforts means efforts to achieve an ACDBE goal or other requirement of this part that, by their scope, intensity, and appropriateness to the objective, can reasonably be expected to meet the program requirement.

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

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

Joint venture means an association of an ACDBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the ACDBE is responsible for a distinct, clearly defined portion of the work of the contract and whose shares in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest. Joint venture entities are not certified as ACDBEs.

Large hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least one percent of all passenger boardings in the United States.

Management contract or subcontract means an agreement with a recipient or another management contractor under which a firm directs or operates one or more business activities, the assets of which are owned, leased, or otherwise controlled by the recipient. The managing agent generally receives, as compensation, a flat fee or a percentage of the gross receipts or profit from the business activity. For purposes of this subpart, the business activity operated or directed by the managing agent must be other than an aeronautical activity, be located at an airport subject to this subpart, and be engaged in the sale of consumer goods or provision of services to the public.

Material amendment means a significant change to the basic rights or obligations of the parties to a concession agreement. Examples of material amendments include an extension to the term not provided for in the original agreement or a substantial increase in the scope of the concession privilege. Examples of nonmaterial amendments include a change in the name of the concessionaire or a change to the payment due dates.

Medium hub primary airport means a commercial service airport that has a number of passenger boardings equal to at least 0.25 percent of all passenger boardings in the United States but less than one percent of such passenger boardings.

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

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii that is a not-for-profit organization chartered by the State of Hawaii, and is controlled by Native Hawaiians

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Nonhub primary airport means a commercial service airport that has more than 10,000 passenger boardings each year but less than 0.05 percent of all passenger boardings in the United States.

Part 26 means 49 CFR part 26, the Department of Transportation's disadvantaged business enterprise regulation for DOT-assisted contracts.

Personal net worth means the net value of the assets of an individual remaining after total liabilities are deducted. An individual's personal net worth (PNW) does not include the following:

(1) The individual's ownership interest in an ACDBE firm or a firm that is applying for ACDBE certification; (2) The individual's equity in his or her primary place of residence; and (3) Other assets that the individual can document are necessary to obtain financing or a franchise agreement for the initiation or expansion of his or her ACDBE firm (or have in fact been encumbered to support existing financing for the individual's ACDBE business) to a maximum of \$3 million. The effectiveness of this paragraph (3) of this definition is suspended with respect to any application for ACDBE certification made or any financing or franchise agreement obtained after June 20, 2012.

Primary airport means a commercial service airport that the Secretary determines to have more than 10,000 passengers enplaned annually.

Primary industry classification means the North American Industrial Classification System (NAICS) code designation that best describes the primary business of a firm. The NAICS Manual is available through the National Technical Information Service (NTIS) of the U.S. Department of Commerce (Springfield, VA, 22261). NTIS also makes materials available through its Web site (<http://www.ntis.gov/naics>).

Primary recipient means a recipient to which DOT financial assistance is extended through the programs of the FAA and which passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours and where top management's business records are kept. If the offices from which management is directed and where business records are kept are in different locations, the recipient will determine the principal place of business for ACDBE program purposes.

Race-conscious means a measure or program that is focused specifically on assisting only ACDBEs, including women-owned ACDBEs. For the purposes of this part, race-conscious measures include gender-conscious measures.

Race-neutral means a measure or program that is, or can be, used to assist all small businesses, without making distinctions or classifications on the basis of race or gender.

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to ACDBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

Small business concern means a for profit business that does not exceed the size standards of §23.33 of this part.

Small hub airport means a publicly owned commercial service airport that has a number of passenger boardings equal to at least 0.05 percent of all passenger boardings in the United States but less than 0.25 percent of such passenger boardings.

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who is—

- (1) Any individual determined by a recipient to be a socially and economically disadvantaged individual on a case-by-case basis.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans," which includes persons who are American Indians, Eskimos, Aleuts, or Native Hawaiians;
 - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Commonwealth of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Juvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - (vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

Recipient means any entity, public or private, to which DOT financial assistance is extended, whether directly or through another recipient, through the programs of the FAA.

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

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (*i.e.*, "You must do XYZ" means that recipients must do XYZ).

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007; 77 FR 36931, June 20, 2012]

[⬆️ Back to Top](#)

§23.5 To whom does this part apply?

If you are a recipient that has received a grant for airport development at any time after January 1988 that was authorized under Title 49 of the United States Code, this part applies to you.

[⬆️ Back to Top](#)

§23.7 Program reviews.

In 2010, and thereafter at the discretion of the Secretary, the Department will initiate a review of the ACDBE program to determine what, if any, modifications should be made to this part.

[75 FR 16358, Apr. 1, 2010]

[⬆️ Back to Top](#)

§23.9 What are the nondiscrimination and assurance requirements of this part for recipients?

(a) As a recipient, you must meet the non-discrimination requirements provided in part 26, §26.7 with respect to the award and performance of any concession agreement, management contract or subcontract, purchase or lease agreement, or other agreement covered by this subpart.

(b) You must also take all necessary and reasonable steps to ensure nondiscrimination in the award and administration of contracts and agreements covered by this part.

(c) You must include the following assurances in all concession agreements and management contracts you execute with any firm after April 21, 2005:

(1) "This agreement is subject to the requirements of the U.S. Department of Transportation's regulations, 49 CFR part 23. The concessionaire or contractor agrees that it will not discriminate against any business owner because of the owner's race, color, national origin, or sex in connection with the award or performance of any concession agreement, management contract, or subcontract, purchase or lease agreement, or other agreement covered by 49 CFR part 23.

(2) "The concessionaire or contractor agrees to include the above statements in any subsequent concession agreement or contract covered by 49 CFR part 23, that it enters and cause those businesses to similarly include the statements in further agreements."

[⬆️ Back to Top](#)

§23.11 What compliance and enforcement provisions are used under this part?

The compliance and enforcement provisions of part 26 (§§26.101 and 26.105 through 26.109) apply to this part in the same way that they apply to FAA recipients and programs under part 26.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

[⬆️ Back to Top](#)

§23.13 How does the Department issue guidance, interpretations, exemptions, and waivers pertaining to this

part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 23 and issued after April 21, 2005, express the official positions and views of the Department of Transportation or the Federal Aviation Administration.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, and the FAA may issue written interpretations of or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or the FAA, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 23.

(c) You may apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation or the FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(d) You can apply for a waiver of any provision of subpart B or D of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate an ACDBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of subpart B or D of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the FAA. The application must include a specific program proposal and address how you will meet the criteria of paragraph (d)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the ACDBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of ACDBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or D of this part;

(ii) Conditions at your airport are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to concession opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and FAA program requirements.

(3) The FAA Administrator has the authority to approve your application. If the Administrator grants your application, you may administer your ACDBE program as provided in your proposal, subject to the following conditions:

(i) ACDBE eligibility is determined as provided in subpart C of this part, and ACDBE participation is counted as provided in §§23.53 through 23.55.

(ii) Your level of ACDBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of the your modified program; and

(iv) Any other conditions the Administrator makes on the grant of the waiver.

(4) The Administrator may end a program waiver at any time and require you to comply with this part's provisions. The Administrator may also extend the waiver, if he or she determines that all requirements of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program waiver.

[70 FR 14508, Mar. 22, 2005, as amended at 72 FR 15616, Apr. 2, 2007]

[⬆ Back to Top](#)

Subpart B—ACDBE Programs

[⬆ Back to Top](#)

§23.21 Who must submit an ACDBE program to FAA, and when?

(a) Except as provided in paragraph (e) of this section, if you are a primary airport that has or was required to have a concessions DBE program prior to April 21, 2005, you must submit a revised ACDBE program meeting the requirements of this part to the appropriate FAA regional office for approval.

(1) You must submit this revised program on the same schedule provided for your first submission of overall goals in §23.45(a) of this part.

(2) Timely submission and FAA approval of your revised ACDBE program is a condition of eligibility for FAA financial assistance.

(3) Until your new ACDBE program is submitted and approved, you must continue to implement your concessions DBE program that was in effect before the effective date of this amendment to part 23, except with respect to any provision that is contrary to this part.

(b) If you are a primary airport that does not now have a DBE concessions program, and you apply for a grant of FAA funds for airport planning and development under 49 U.S.C. 47107 *et seq.*, you must submit an ACDBE program to the FAA at the time of your application. Timely submission and FAA approval of your ACDBE program are conditions of eligibility for FAA financial assistance.

(c) If you are the owner of more than one airport that is required to have an ACDBE program, you may implement one plan for all your locations. If you do so, you must establish a separate ACDBE goal for each location.

(d) If you make any significant changes to your ACDBE program at any time, you must provide the amended program to the FAA for approval before implementing the changes.

(e) If you are a non-primary airport, non-commercial service airport, a general aviation airport, reliever airport, or any other airport that does not have scheduled commercial service, you are not required to have an ACDBE program. However, you must take appropriate outreach steps to encourage available ACDBEs to participate as concessionaires whenever there is a concession opportunity.

[⬆ Back to Top](#)

§23.23 What administrative provisions must be in a recipient's ACDBE program?

(a) If, as a recipient that must have an ACDBE program, the program must include provisions for a policy statement, liaison officer, and directory, as provided in part 26, §§26.23, 26.25, and 26.31, as well as certification of ACDBEs as provided by Subpart C of this part. You must include a statement in your program committing you to operating your ACDBE program in a nondiscriminatory manner.

(b) You may combine your provisions for implementing these requirements under this part and part 26 (e.g., a single policy statement can cover both Federally-assisted airport contracts and concessions; the same individual can act as the liaison officer for both part 23 and part 26 matters).

[⬆ Back to Top](#)

§23.25 What measures must recipients include in their ACDBE programs to ensure nondiscriminatory participation of ACDBEs in concessions?

(a) You must include in your ACDBE program a narrative description of the types of measures you intend to make to ensure nondiscriminatory participation of ACDBEs in concession and other covered activities.

(b) Your ACDBE program must provide for setting goals consistent with the requirements of Subpart D of this part.

(c) Your ACDBE program must provide for seeking ACDBE participation in all types of concession activities, rather than concentrating participation in one category or a few categories to the exclusion of others.

(d) Your ACDBE program must include race-neutral measures that you will take. You must maximize the use of race-neutral measures, obtaining as much as possible of the ACDBE participation needed to meet overall goals through such measures. These are responsibilities that you directly undertake as a recipient, in addition to the efforts that concessionaires make, to obtain ACDBE participation. The following are examples of race-neutral measures you can implement:

(1) Locating and identifying ACDBEs and other small businesses who may be interested in participating as concessionaires under this part;

(2) Notifying ACDBEs of concession opportunities and encouraging them to compete, when appropriate;

(3) When practical, structuring concession activities so as to encourage and facilitate the participation of ACDBEs

(4) Providing technical assistance to ACDBEs in overcoming limitations, such as inability to obtain bonding or financing;

(5) Ensuring that competitors for concession opportunities are informed during pre-solicitation meetings about how the recipient's ACDBE program will affect the procurement process;

(6) Providing information concerning the availability of ACDBE firms to competitors to assist them in obtaining ACDBE participation; and

(7) Establishing a business development program (see part 26, §26.35); technical assistance program; or taking other steps to foster ACDBE participation in concessions.

(e) Your ACDBE program must also provide for the use of race-conscious measures when race-neutral measures, standing alone, are not projected to be sufficient to meet an overall goal. The following are examples of race-conscious measures you can implement:

(1) Establishing concession-specific goals for particular concession opportunities.

(i) If the objective of the concession-specific goal is to obtain ACDBE participation through a direct ownership arrangement with a ACDBE, calculate the goal as a percentage of the total estimated annual gross receipts from the concession.

(ii) If the goal applies to purchases and/or leases of goods and services, calculate the goal by dividing the estimated dollar value of such purchases and/or leases from ACDBEs by the total estimated dollar value of all purchases to be made by the concessionaire.

(iii) To be eligible to be awarded the concession, competitors must make good faith efforts to meet this goal. A competitor may do so either by obtaining enough ACDBE participation to meet the goal or by documenting that it made sufficient good faith efforts to do so.

(iv) The administrative procedures applicable to contract goals in part 26, §26.51-53, apply with respect to concession-specific goals.

(2) Negotiation with a potential concessionaire to include ACDBE participation, through direct ownership arrangements or measures, in the operation of the concession.

(3) With the prior approval of FAA, other methods that take a competitor's ability to provide ACDBE participation into account in awarding a concession.

(f) Your ACDBE program must require businesses subject to ACDBE goals at the airport (except car rental companies) to make good faith efforts to explore all available options to meet goals, to the maximum extent practicable, through direct ownership arrangements with DBEs.

(g) As provided in §23.61 of this part, you must not use set-asides and quotas as means of obtaining ACDBE participation.

[⬆ Back to Top](#)

§23.27 What information does a recipient have to retain and report about implementation of its ACDBE program?

(a) As a recipient, you must retain sufficient basic information about your program implementation, your certification of ACDBEs, and the award and performance of agreements and contracts to enable the FAA to determine your compliance with this part. You must retain this data for a minimum of three years following the end of the concession agreement or other covered contract.

(b) Beginning March 1, 2006, you must submit an annual report on ACDBE participation using the form found in appendix A to this part. You must submit the report to the appropriate FAA Regional Civil Rights Office.

[⬆ Back to Top](#)

§23.29 What monitoring and compliance procedures must recipients follow?

As a recipient, you must implement appropriate mechanisms to ensure compliance with the requirements of this part by all participants in the program. You must include in your concession program the specific provisions to be inserted into concession agreements and management contracts setting forth the enforcement mechanisms and other means you use to ensure compliance. These provisions must include a monitoring and enforcement mechanism to verify that the work committed to ACDBEs is actually performed by the ACDBEs. This mechanism must include a written certification that you have reviewed records of all contracts, leases, joint venture agreements, or other concession-related agreements and monitored the work on-site at your airport for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of concession performance for other purposes.

[77 FR 36931, June 20, 2012]

[⬆ Back to Top](#)

Subpart C—Certification and Eligibility of ACDBEs

[⬆ Back to Top](#)

§23.31 What certification standards and procedures do recipients use to certify ACDBEs?

(a) As a recipient, you must use, except as provided in this subpart, the procedures and standards of part 26, §§26.61-91 for certification of ACDBEs to participate in your concessions program. Your ACDBE program must incorporate the use of these standards and procedures and must provide that certification decisions for ACDBEs will be made by the Unified Certification Program (UCP) in your state (see part 26, §26.81).

(b) The UCP's directory of eligible DBEs must specify whether a firm is certified as a DBE for purposes of part 26, an ACDBE for purposes of part 23, or both.

(c) As an airport or UCP, you must review the eligibility of currently certified ACDBE firms to make sure that they meet the eligibility standards of this part.

(1) You must complete these reviews as soon as possible, but in no case later than April 21, 2006 or three years from the anniversary date of each firm's most recent certification, whichever is later.

(2) You must direct all currently certified ACDBEs to submit to you by April 21, 2006, a personal net worth statement, a certification of disadvantage, and an affidavit of no change.

[⬆ Back to Top](#)

§23.33 What size standards do recipients use to determine the eligibility of ACDBEs?

(a) As a recipient, you must, except as provided in paragraph (b) of this section, treat a firm as a small business eligible to be certified as an ACDBE if its gross receipts, averaged over the firm's previous three fiscal years, do not exceed \$56.42 million.

(b) The following types of businesses have size standards that differ from the standard set forth in paragraph (a) of this section:

- (1) *Banks and financial institutions*: \$1 billion in assets;
- (2) *Car rental companies*: \$75.23 million average annual gross receipts over the firm's three previous fiscal years, as adjusted by the Department for inflation every two years from April 3, 2009.
- (3) *Pay telephones*: 1,500 employees;
- (4) *Automobile dealers*: 350 employees.

(c) The Department adjusts the numbers in paragraphs (a) and (b)(2) of this section using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. The Department publishes a FEDERAL REGISTER document informing the public of each adjustment.

[77 FR 36931, June 20, 2012]

[⬆ Back to Top](#)

§23.35 What is the personal net worth standard for disadvantaged owners of ACDBEs?

The personal net worth standard used in determining eligibility for purposes of this part is \$1.32 million. Any individual who has a personal net worth exceeding this amount is not a socially and economically disadvantaged individual for purposes of this part, even if the individual is a member of a group otherwise presumed to be disadvantaged.

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

[⬆ Back to Top](#)

§23.37 Are firms certified under 49 CFR part 26 eligible to participate as ACDBEs?

(a) You must presume that a firm that is certified as a DBE under part 26 is eligible to participate as an ACDBE. By meeting the size, disadvantage (including personal net worth), ownership and control standards of part 26, the firm will have also met the eligibility standards for part 23.

(b) However, before certifying such a firm, you must ensure that the disadvantaged owners of a DBE certified under part 26 are able to control the firm with respect to its activity in the concessions program. In addition, you are not required to certify a part 26 DBE as a part 23 ACDBE if the firm does not do work relevant to the airport's concessions program.

[⬆ Back to Top](#)**§23.39 What other certification requirements apply in the case of ACDBEs?**

(a) The provisions of part 26, §§26.83 (c)(2) through (c)(6) do not apply to certifications for purposes of this part. Instead, in determining whether a firm is an eligible ACDBE, you must take the following steps:

- (1) Obtain the resumes or work histories of the principal owners of the firm and personally interview these individuals;
- (2) Analyze the ownership of stock of the firm, if it is a corporation;
- (3) Analyze the bonding and financial capacity of the firm;
- (4) Determine the work history of the firm, including any concession contracts or other contracts it may have received;
- (5) Obtain or compile a list of the licenses of the firm and its key personnel to perform the concession contracts or other contracts it wishes to receive;
- (6) Obtain a statement from the firm of the type(s) of concession(s) it prefers to operate or the type(s) of other contract(s) it prefers to perform.

(b) In reviewing the affidavit required by part 26, §26.83(j), you must ensure that the ACDBE firm meets the applicable size standard in §23.33.

(c) For purposes of this part, the term prime contractor in part 26, §26.87(i) includes a firm holding a prime contract with an airport concessionaire to provide goods or services to the concessionaire or a firm holding a prime concession agreement with a recipient.

(d) With respect to firms owned by Alaska Native Corporations (ANCs), the provisions of part 26, §26.73(i) do not apply under this part. The eligibility of ANC-owned firms for purposes of this part is governed by §26.73(h).

(e) When you remove a concessionaire's eligibility after the concessionaire has entered a concession agreement, because the firm exceeded the small business size standard or because an owner has exceeded the personal net worth standard, and the firm in all other respects remains an eligible DBE, you may continue to count the concessionaire's participation toward DBE goals during the remainder of the current concession agreement. However, you must not count the concessionaire's participation toward DBE goals beyond the termination date for the concession agreement in effect at the time of the decertification (e.g., in a case where the agreement is renewed or extended, or an option for continued participation beyond the current term of the agreement is exercised).

(f) When UCPs are established in a state (see part 26, §26.81), the UCP, rather than individual recipients, certifies firms for the ACDBE concession program.

(g) You must use the Uniform Application Form found in appendix F to part 26. However, you must instruct applicants to take the following additional steps:

(1) In the space available in section 2(B)(7) of the form, the applicant must state that it is applying for certification as an ACDBE.

(2) With respect to section 4(C) of the form, the applicant must provide information on an attached page concerning the address/location, ownership/lease status, current value of property or lease, and fees/lease payments paid to the airport.

(3) The applicant need not complete section 4(I) and (J). However, the applicant must provide information on an attached page concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession.

(h) Car rental companies and private terminal owners or lessees are not authorized to certify firms as ACDBEs. As a car rental company or private terminal owner or lessee, you must obtain ACDBE participation from firms which a recipient or UCPs have certified as ACDBEs.

(i) You must use the certification standards of this part to determine the ACDBE eligibility of firms that provide goods and services to concessionaires.

[⬆ Back to Top](#)**Subpart D—Goals, Good Faith Efforts, and Counting**[⬆ Back to Top](#)**§23.41 What is the basic overall goal requirement for recipients?**

(a) If you are a recipient who must implement an ACDBE program, you must, except as provided in paragraph (b) of this section, establish two separate overall ACDBE goals. The first is for car rentals; the second is for concessions other than car rentals.

(b) If your annual car rental concession revenues, averaged over the three-years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a car rental overall goal. If your annual revenues for concessions other than car rentals, averaged over the three years preceding the date on which you are required to submit overall goals, do not exceed \$200,000, you are not required to submit a non-car rental overall goal.

(c) Each overall goal must cover a three-year period. You must review your goals annually to make sure they continue to fit your circumstances appropriately. You must report to the FAA any significant adjustments that you make to your goal in the time before your next scheduled submission.

(d) Your goals established under this part must provide for participation by all certified ACDBEs and may not be subdivided into group-specific goals.

(e) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive FAA financial assistance.

[⬆ Back to Top](#)**§23.43 What are the consultation requirements in the development of recipients' overall goals?**

(a) As a recipient, you must consult with stakeholders before submitting your overall goals to FAA.

(b) Stakeholders with whom you must consult include, but are not limited to, minority and women's business groups, community organizations, trade associations representing concessionaires currently located at the airport, as well as existing concessionaires themselves, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged businesses, the effects of discrimination on opportunities for ACDBEs, and the recipient's efforts to increase participation of ACDBEs.

[⬆ Back to Top](#)

§23.45 What are the requirements for submitting overall goal information to the FAA?

(a) You must submit your overall goals to the appropriate FAA Regional Civil Rights Office for approval. Your first set of overall goals meeting the requirements of this subpart are due on the following schedule:

(1) If you are a large or medium hub primary airport on April 21, 2005, by January 1, 2006. You must make your next submissions by October 1, 2008.

(2) If you are a small hub primary airport on April 21, 2005, by October 1, 2006.

(3) If you are a nonhub primary airport on April 21, 2005, by October 1, 2007.

(b) You must then submit new goals every three years after the date that applies to you.

(c) Timely submission and FAA approval of your overall goals is a condition of eligibility for FAA financial assistance.

(d) In the time before you make your first submission under paragraph (a) of this section, you must continue to use the overall goals that have been approved by the FAA before the effective date of this part.

(e) Your overall goal submission must include a description of the method used to calculate your goals and the data you relied on. You must "show your work" to enable the FAA to understand how you concluded your goals were appropriate. This means that you must provide to the FAA the data, calculations, assumptions, and reasoning used in establishing your goals.

(f) Your submission must include your projection of the portions of your overall goals you propose to meet through use of race-neutral and race-conscious means, respectively, and the basis for making this projection (see §23.51(d)(5)).

(g) FAA may approve or disapprove the way you calculated your goal, including your race-neutral/race-conscious "split," as part of its review of your plan or goal submission. Except as provided in paragraph (h) of this section, the FAA does not approve or disapprove the goal itself (*i.e.*, the number).

(h) If the FAA determines that your goals have not been correctly calculated or the justification is inadequate, the FAA may, after consulting with you, adjust your overall goal or race-conscious/race-neutral "split." The adjusted goal represents the FAA's determination of an appropriate overall goal for ACDBE participation in the recipient's concession program, based on relevant data and analysis. The adjusted goal is binding on you.

(i) If a new concession opportunity, the estimated average annual gross revenues of which are anticipated to be \$200,000 or greater, arises at a time that falls between normal submission dates for overall goals, you must submit an appropriate adjustment to your overall goal to the FAA for approval no later than 90 days before issuing the solicitation for the new concession opportunity.

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

[⬆ Back to Top](#)

§23.47 What is the base for a recipient's goal for concessions other than car rentals?

(a) As a recipient, the base for your goal includes the total gross receipts of concessions, except as otherwise provided in this section.

(b) This base does not include the gross receipts of car rental operations.

(c) The dollar amount of a management contract or subcontract with a non-ACDBE and the gross receipts of business activities to which a management or subcontract with a non-ACDBE pertains are not added to this base.

(d) This base does not include any portion of a firm's estimated gross receipts that will not be generated from a concession.

Example to paragraph (d): A firm operates a restaurant in the airport terminal which serves the traveling public and under the same lease agreement, provides in-flight catering service to air carriers. The projected gross receipts from the restaurant are included in the overall goal calculation, while the gross receipts to be earned by the in-flight catering services are not.

[⬆ Back to Top](#)

§23.49 What is the base for a recipient's goal for car rentals?

Except in the case where you use the alternative goal approach of §23.51(c)(5)(ii), the base for your goal is the total gross receipts of car rental operations at your airport. You do not include gross receipts of other concessions in this base.

[⬆ Back to Top](#)

§23.51 How are a recipient's overall goals expressed and calculated?

(a) Your objective in setting a goal is to estimate the percentage of the base calculated under §§23.47-23.49 that would be performed by ACDBEs in the absence of discrimination and its effects.

(1) This percentage is the estimated ACDBE participation that would occur if there were a "level playing field" for firms to work as concessionaires for your airport.

(2) In conducting this goal setting process, you are determining the extent, if any, to which the firms in your market area have suffered discrimination or its effects in connection with concession opportunities or related business opportunities.

(3) You must complete the goal-setting process separately for each of the two overall goals identified in §23.41 of this part.

(b)(1) Each overall concessions goal must be based on demonstrable evidence of the availability of ready, willing and able ACDBEs relative to all businesses ready, willing and able to participate in your ACDBE program (hereafter, the "relative availability of ACDBEs").

(2) You cannot simply rely on the 10 percent national aspirational goal, your previous overall goal, or past ACDBE participation rates in your program without reference to the relative availability of ACDBEs in your market.

(3) Your market area is defined by the geographical area in which the substantial majority of firms which seek to do concessions business with the airport are located and the geographical area in which the firms which receive the substantial majority of concessions-related revenues are located. Your market area may be different for different types of concessions.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of ACDBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining the evidence available to you. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the FAA.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able ACDBEs in your market area from your ACDBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market area that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their Web site, <http://www.census.gov/epcd/cbp/view/cbpview.html>.) Divide the number of ACDBEs by the number of all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

(2) *Use an Active Participants List.* Determine the number of ACDBEs that have participated or attempted to participate in your airport concessions program in previous years. Determine the number of all businesses that have participated or attempted to participate in your airport concession program in previous years. Divide the number of ACDBEs who have participated or attempted to participate by the number for all businesses to derive a base figure for the relative availability of ACDBEs in your market area.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another recipient.* If another airport or other DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* (i) You may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of ACDBEs in your market area.

(ii) In the case of a car rental goal, where it appears that all or most of the goal is likely to be met through the purchases by car rental companies of vehicles or other goods or services from ACDBEs, one permissible alternative is to structure the goal entirely in terms of purchases of goods and services. In this case, you would calculate your car rental overall goal by dividing the estimated dollar value of such purchases from ACDBEs by the total estimated dollar value of all purchases to be made by car rental companies.

(d) *Step 2.* Once you have calculated a base figure, you must examine all relevant evidence reasonably available in your jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at your overall goal.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include, but are not limited to:

(i) The current capacity of ACDBEs to perform work in your concessions program, as measured by the volume of work ACDBEs have performed in recent years; and

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure.

(2) If your base figure is the goal of another recipient, you must adjust it for differences in your market area and your concessions program.

(3) If available, you must consider evidence from related fields that affect the opportunities for ACDBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of ACDBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for ACDBEs to perform in your program.

(4) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination, or the effects of an ongoing ACDBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(5) Among the information you submit with your overall goal (see 23.45(e)), you must include description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, as well as the adjustments you made to the base figure and the evidence relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and an explanation of how you used that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see §§26.51(c)).

(e) You are not required to obtain prior FAA concurrence with your overall goal (*i.e.*, with the number itself). However, if the FAA's review suggests that your overall goal has not been correctly calculated, or that your method for calculating goals is inadequate, the FAA may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you.

(f) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the FAA Administrator for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(1) Reflect the relative availability of ACDBEs in your local market area to the maximum extent feasible given the data available to you; and

(2) Avoid imposing undue burdens on non-ACDBEs.

[⬆️ Back to Top](#)

§23.53 How do car rental companies count ACDBE participation toward their goals?

(a) As a car rental company, you may, in meeting the goal the airport has set for you, include purchases or leases of vehicles from any vendor that is a certified ACDBE.

(b) As a car rental company, if you choose to meet the goal the airport has set for you by including purchases or leases of vehicles from an ACDBE vendor, you must also submit to the recipient documentation of the good faith efforts you have made to obtain ACDBE participation from other ACDBE providers of goods and services.

(c) While this part does not require you to obtain ACDBE participation through direct ownership arrangements, you may count such participation toward the goal the airport has set for you.

(d) The following special rules apply to counting participation related to car rental operations:

(1) Count the entire amount of the cost charged by an ACDBE for repairing vehicles, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(2) Count the entire amount of the fee or commission charged by a ACDBE to manage a car rental concession under an agreement with the concessionaire toward ACDBE goals, provided that it is reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) Do not count any portion of a fee paid by a manufacturer to a car dealership for reimbursement of work performed under the manufacturer's warranty.

(e) For other goods and services, count participation toward ACDBE goals as provided in part 26, §26.55 and §23.55 of this part. In the event of any conflict between these two sections, §23.55 controls.

(f) If you have a national or regional contract, count a pro-rated share of the amount of that contract toward the goals of each airport covered by the contract. Use the proportion of your applicable gross receipts as the basis for making this pro-rated assignment of ACDBE participation.

Example to paragraph (f): Car Rental Company X signs a regional contract with an ACDBE car dealer to supply cars to all five airports in a state. The five airports each account for 20 percent of X's gross receipts in the state. Twenty percent of the value of the cars purchased through the ACDBE car dealer would count toward the goal of each airport.

[⬆ Back to Top](#)

§23.55 How do recipients count ACDBE participation toward goals for items other than car rentals?

(a) You count only ACDBE participation that results from a commercially useful function. For purposes of this part, the term commercially useful function has the same meaning as in part 26, §26.55(c), except that the requirements of §26.55(c)(3) do not apply to concessions.

(b) Count the total dollar value of gross receipts an ACDBE earns under a concession agreement and the total dollar value of a management contract or subcontract with an ACDBE toward the goal. However, if the ACDBE enters into a subconcession agreement or subcontract with a non-ACDBE, do not count any of the gross receipts earned by the non-ACDBE.

(c) When an ACDBE performs as a subconcessionaire or subcontractor for a non-ACDBE, count only the portion of the gross receipts earned by the ACDBE under its subagreement.

(d) When an ACDBE performs as a participant in a joint venture, count a portion of the gross receipts equal to the distinct, clearly defined portion of the work of the concession that the ACDBE performs with its own forces toward ACDBE goals.

(e) Count the entire amount of fees or commissions charged by an ACDBE firm for a *bona fide* service, provided that, as the recipient, you determine this amount to be reasonable and not excessive as compared with fees customarily allowed for similar services. Such services may include, but are not limited to, professional, technical, consultant, legal, security systems, advertising, building cleaning and maintenance, computer programming, or managerial.

(f) Count 100 percent of the cost of goods obtained from an ACDBE manufacturer. For purposes of this part, the term manufacturer has the same meaning as in part 26, §26.55(e)(1)(ii).

(g) Count 100 percent of the cost of goods purchased or leased from a ACDBE regular dealer. For purposes of this part, the term "regular dealer" has the same meaning as in part 26, §26.55(e)(2)(ii).

(h) Count credit toward ACDBE goals for goods purchased from an ACDBE which is neither a manufacturer nor a regular dealer as follows:

(1) Count the entire amount of fees or commissions charged for assistance in the procurement of the goods, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the goods themselves.

(2) Count the entire amount of fees or transportation charges for the delivery of goods required for a concession, provided that this amount is reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of goods themselves.

(i) If a firm has not been certified as an ACDBE in accordance with the standards in this part, do not count the firm's participation toward ACDBE goals.

(j) Do not count the work performed or gross receipts earned by a firm after its eligibility has been removed toward ACDBE goals. However, if an ACDBE firm certified on April 21, 2005 is decertified because one or more of its disadvantaged owners do not meet the personal net worth criterion or the firm exceeds business size standards of this part during the performance of a contract or other agreement, the firm's participation may continue to be counted toward ACDBE goals for the remainder of the term of the contract or other agreement (but not extensions or renewals of such contracts or agreements).

(k) Do not count costs incurred in connection with the renovation, repair, or construction of a concession facility (sometimes referred to as the "build-out").

(l) Do not count the ACDBE participation of car rental companies toward your ACDBE achievements toward this goal.

[⬆ Back to Top](#)

§23.57 What happens if a recipient falls short of meeting its overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this part, simply because your ACDBE participation falls short of your overall goals. You can be penalized or treated as being in noncompliance only if you have failed to administer your ACDBE program in good faith.

(b) If the awards and commitments shown on your Uniform Report of ACDBE Participation (found in Appendix A to this Part) at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your ACDBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3) (i) If you are a CORE 30 airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (b)(1) and (2) of this section to the FAA for approval. If the FAA approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As an airport not meeting the criteria of paragraph (b)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to the FAA, on request, for their review.

(4) The FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this part, and therefore subject to the remedies in §23.11 of this part and other applicable regulations, for failing to implement your ACDBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FAA in a timely manner as required under paragraph (b)(3) of this section;

(ii) FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement:

(A) The corrective actions to which you have committed, or

(B) Conditions that FAA has imposed following review of your analysis and corrective actions.

(c) If information coming to the attention of FAA demonstrates that current trends make it unlikely that you, as an airport, will achieve ACDBE awards and commitments that would be necessary to allow you to meet your overall goal at the end of the fiscal year, FAA may require you to make further good faith efforts, such as modifying your race-conscious/race-neutral split or introducing additional race-neutral or race-conscious measures for the remainder of the fiscal year.

[70 FR 14508, Mar. 22, 2005, as amended at 77 FR 36931, June 20, 2012]

[Back to Top](#)

§23.59 What is the role of the statutory 10 percent goal in the ACDBE program?

(a) The statute authorizing the ACDBE program provides that, except to the extent the Secretary determines otherwise, not less than 10 percent of concession businesses are to be ACDBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in airport concessions.

(c) The national 10 percent aspirational goal does not authorize or require recipients to set overall or concession-specific 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.

[Back to Top](#)

§23.61 Can recipients use quotas or set-asides as part of their ACDBE programs?

You must not use quotas or set-asides for ACDBE participation in your program.

[Back to Top](#)

Subpart E—Other Provisions

[Back to Top](#)

§23.71 Does a recipient have to change existing concession agreements?

Nothing in this part requires you to modify or abrogate an existing concession agreement (one executed before April 21, 2005) during its term. When an extension or option to renew such an agreement is exercised, or when a material amendment is made, you must assess potential for ACDBE participation and may, if permitted by the agreement, use any means authorized by this part to obtain a modified amount of ACDBE participation in the renewed or amended agreement.

[Back to Top](#)

§23.73 What requirements apply to privately-owned or leased terminal buildings?

(a) If you are a recipient who is required to implement an ACDBE program on whose airport there is a privately-owned or leased terminal building that has concessions, or any portion of such a building, this section applies to you.

(b) You must pass through the applicable requirements of this part to the private terminal owner or lessee via your agreement with the owner or lessee or by other means. You must ensure that the terminal owner or lessee complies with the requirements of this part.

(c) If your airport is a primary airport, you must obtain from the terminal owner or lessee the goals and other elements of the ACDBE program required under this part. You must incorporate this information into your concession plan and submit it to the FAA in accordance with this part.

(d) If the terminal building is at a non-primary commercial service airport or general aviation airport or reliever airport, you must ensure that the owner complies with the requirements in §23.21(e).

[Back to Top](#)

§23.75 Can recipients enter into long-term, exclusive agreements with concessionaires?

(a) Except as provided in paragraph (b) of this section, you must not enter into long-term, exclusive agreements for concessions. For purposes of this section, a long-term agreement is one having a term longer than five years.

(b) You may enter into a long-term, exclusive concession agreement only under the following conditions:

- (1) Special local circumstances exist that make it important to enter such agreement, and
- (2) The responsible FAA regional office approves your plan for meeting the standards of paragraph (c) of this section.

(c) In order to obtain FAA approval of a long-term-exclusive concession agreement, you must submit the following information to the FAA regional office:

- (1) A description of the special local circumstances that warrant a long-term, exclusive agreement.
- (2) A copy of the draft and final leasing and subleasing or other agreements. This long-term, exclusive agreement must provide that:
 - (i) A number of ACDBEs that reasonably reflects their availability in your market area, in the absence of discrimination, to do the types of work required will participate as concessionaires throughout the term of the agreement and account for at a percentage of the estimated annual gross receipts equivalent to a level set in accordance with §§23.47 through 23.49 of this part.
 - (ii) You will review the extent of ACDBE participation before the exercise of each renewal option to consider whether an increase or decrease in ACDBE participation is warranted.
 - (iii) An ACDBE concessionaire that is unable to perform successfully will be replaced by another ACDBE concessionaire, if the remaining term of the agreement makes this feasible. In the event that such action is not feasible, you will require the concessionaire to make good faith efforts during the remaining term of the agreement to encourage ACDBEs to compete for the purchases and/or leases of goods and services to be made by the concessionaire.
- (3) Assurances that any ACDBE participant will be in an acceptable form, such as a sublease, joint venture, or partnership.
- (4) Documentation that ACDBE participants are properly certified.
- (5) A description of the type of business or businesses to be operated (e.g., location, storage and delivery space, "back-of-the-house facilities" such as kitchens, window display space, advertising space, and other amenities that will increase the ACDBE's chance to succeed).
- (6) Information on the investment required on the part of the ACDBE and any unusual management or financial arrangements between the prime concessionaire and ACDBE.
- (7) Information on the estimated gross receipts and net profit to be earned by the ACDBE.

[Back to Top](#)

§23.77 Does this part preempt local requirements?

(a) In the event that a State or local law, regulation, or policy differs from the requirements of this part, the recipient must, as a condition of remaining eligible to receive Federal financial assistance from the DOT, take such steps as may be necessary to comply with the requirements of this part.

(b) You must clearly identify any State or local law, regulation, or policy pertaining to minority, women's, or disadvantaged business enterprise concerning airport concessions that adds to, goes beyond, or imposes more stringent requirements than the provisions of this part. FAA will determine whether such a law, regulation, or policy conflicts with this part, in which case the requirements of this part will govern.

(c) If not deemed in conflict by the FAA, you must write and administer such a State or local law, policy, or regulation separately from the ACDBE program.

(d) You must provide copies of any such provisions and the legal authority supporting them to the FAA with your ACDBE program submission. FAA will not approve an ACDBE program if there are such provisions that conflict with the provisions of this part.

(e) However, nothing in this part preempts any State or local law, regulation, or policy enacted by the governing body of a recipient, or the authority of any State or local government or recipient to adopt or enforce any law, regulation, or policy relating to ACDBEs, as long as the law, regulation, or policy does not conflict with this part.

[Back to Top](#)

§23.79 Does this part permit recipients to use local geographic preferences?

No. As a recipient you must not use a local geographic preference. For purposes of this section, a local geographic preference is any requirement that gives an ACDBE located in one place (e.g., your local area) an advantage over ACDBEs from other places in obtaining business as, or with, a concession at your airport.

[Back to Top](#)

Appendix A to Part 23—Uniform Report of ACDBE Participation

INSTRUCTIONS FOR UNIFORM REPORT OF ACDBE PARTICIPATION

1. Insert name of airport receiving FAA financial assistance and AIP number.
2. Provide the name and contact information (phone, fax, e-mail) for the person FAA should contact with questions about the report.
- 3a. Provide the annual reporting period to which the report pertains (e.g., October 2005-September 2006).

3b. Provide the date on which the report is submitted to FAA.

4. This block and blocks 5 and 6 concern *non-car rental* goals and participation only. In this block, provide the overall non-car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.

5. For purposes of this block and blocks 6, 8, and 9, the participation categories listed at the left of the block are the following: "Prime Concessions" are concessions who have a direct relationship with the airport (e.g., a company who has a lease agreement directly with the airport to operate a concession). A "subconcession" is a firm that has a sublease or other agreement with a prime concessionaire, rather than with the airport itself, to operate a concession at the airport. A "management contract" is an agreement between the airport and a firm to manage a portion of the airport's facilities or operations (e.g., manage the parking facilities). "Goods/services" refers to those goods and services purchased by the airport itself or by concessionaires and management contractors from certified DBEs.

Block 5 concerns *all* non-car rental concession activity covered by 49 CFR part 23 during the reporting period, both new or continuing.

In Column A, enter the total concession gross revenues for concessionaires (prime and sub) and purchases of goods and services (ACDBE and non-ACDBE combined) at the airport. In Column B, enter the number of lease agreements, contracts, etc. in effect or taking place during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBE and non-ACDBE combined).

Because, by statute, non-ACDBE management contracts do not count as part of the base for ACDBE goals, the cells for total management contract participation and ACDBE participation as a percentage of total management contracting dollars are not intended to be filled in blocks 5, 6, 8, and 9.

In Column C, enter the total gross revenues in each participation category (ACDBEs) only. In Column D, enter the number of lease agreements, contracts, etc., in effect or entered into during the reporting period in each participation category for all concessionaires and purchases of goods and services (ACDBEs only).

Columns E and F are subsets of Column C: break out the total gross revenues listed in Column C into the portions that are attributable to race-conscious and race-neutral measures, respectively. Column G is a percentage calculation. It answers the question, what percentage of the numbers in Column A is represented by the corresponding numbers in Column C?

6. The numbers in this Block concern only *new* non-car rental concession opportunities that arose during the current reporting period. In other words, the information requested in Block 6 is a subset of that requested in Block 5. Otherwise, this Block is filled out in the same way as Block 5.

7. Blocks 7-9 concern car rental goals and participation. In Block 7, provide the overall car rental percentage goal and the race-conscious (RC) and race-neutral (RN) components of it. The RC and RN percentages should add up to the overall percentage goal.

8. Block 8 is parallel to Block 5, except that it is for car rentals. The instructions for filling it out are the same as for Block 5.

9. Block 9 is parallel to Block 6, except that it is for car rentals. The information requested in Block 9 is a subset of that requested in Block 8. The instructions for filling it out are the same as for Block 6.

10. Block 10 instructs recipients to bring forward the cumulative ACDBE participation figures from Blocks 5 and 8, breaking down these figures by race and gender categories. Participation by non-minority women-owned firms should be listed in the "non-minority women" column. Participation by firms owned by minority women should be listed in the appropriate minority group column. The "other" column should be used to reflect participation by individuals who are not a member of a presumptively disadvantaged group who have been found disadvantaged on a case-by-case basis.

11. This block instructs recipients to attach five information items for each ACDBE firm participating in its program during the reporting period. If the firm's participation numbers are reflected in Blocks 5-6 and/or 8-9, the requested information about that firm should be attached in response to this item.

UNIFORM REPORT OF ACDBE PARTICIPATION

1. Name of Recipient and AIP Number:

2. Contact Information:

3a. Reporting Period:

3b. Date of Report:

4. Current Non-Car Rental ACDBE Goal: Race Conscious Goal __% Race Neutral Goal __% Overall Goal __%

5. Non-car rental Cumulative ACDBE participation	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions							
Subconcessions							
Management Contracts	XXXXXXX	XXXXXXX					XXXXXX
Goods/Services							
Totals							

6. Non-Car rental New ACDBE participation this period	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs
Prime Concessions							
Subconcessions							
Management Contracts	XXXXXXX	XXXXXXX				XXXXXX	
Goods/Services							
Totals							

7. Current Car Rental ACDBE Goal: Race Conscious Goal __% Race Neutral Goal __% Overall Goal __%

8. Car rental Cumulative ACDBE participation	A Total dollars (everyone)	B Total number (everyone)	C Total to ACDBEs (dollars)	D Total to ACDBEs (number)	E RC to ACDBEs (dollars)	F RN to ACDBEs (dollars)	G % of dollars to ACDBEs

Prime Concessions								
Subconcessions								
Goods/Services								
Totals								
9. Car rental	A	B	C	D	E	F	G	
New ACDBE participation this period	Total dollars (everyone)	Total number (everyone)	Total to ACDBEs (dollars)	Total to ACDBEs (number)	RC to ACDBEs (dollars)	RN to ACDBEs (dollars)	% of dollars to ACDBEs	
Prime Concessions								
Subconcessions								
Goods/Services								
Totals								
10. Cumulative ACDBE participation by race/gender	A	B	C	D	E	F	G	H
	Black Americans	Hispanic Americans	Asian-Pacific Americans	Asian-Indian Americans	Native Americans	Non-minority Women	Other	Totals
Car Rental								
Non-Car Rental								
Totals								

11. On an attachment, list the following information for each ACDBE firm participating in your program during the period of this report: (1) Firm name; (2) Type of business; (3) Beginning and expiration dates of agreement, including options to renew; (4) Dates that material amendments have been or will be made to agreement (if known); (5) Estimated gross receipts for the firm during this reporting period.

[⬆️ Back to Top](#)

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[Title 49](#) → [Subtitle A](#) → [Part 26](#)

Title 49: Transportation

PART 26—PARTICIPATION BY DISADVANTAGED BUSINESS ENTERPRISES IN DEPARTMENT OF TRANSPORTATION FINANCIAL ASSISTANCE PROGRAMS

Contents**Subpart A—General**

- §26.1 What are the objectives of this part?
- §26.3 To whom does this part apply?
- §26.5 What do the terms used in this part mean?
- §26.7 What discriminatory actions are forbidden?
- §26.9 How does the Department issue guidance and interpretations under this part?
- §26.11 What records do recipients keep and report?
- §26.13 What assurances must recipients and contractors make?
- §26.15 How can recipients apply for exemptions or waivers?

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

- §26.21 Who must have a DBE program?
- §26.23 What is the requirement for a policy statement?
- §26.25 What is the requirement for a liaison officer?
- §26.27 What efforts must recipients make concerning DBE financial institutions?
- §26.29 What prompt payment mechanisms must recipients have?
- §26.31 What information must you include in your DBE directory?
- §26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?
- §26.35 What role do business development and mentor-protégé programs have in the DBE program?
- §26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?
- §26.39 Fostering small business participation.

Subpart C—Goals, Good Faith Efforts, and Counting

- §26.41 What is the role of the statutory 10 percent goal in this program?
- §26.43 Can recipients use set-asides or quotas as part of this program?
- §26.45 How do recipients set overall goals?
- §26.47 Can recipients be penalized for failing to meet overall goals?
- §26.49 How are overall goals established for transit vehicle manufacturers?
- §26.51 What means do recipients use to meet overall goals?
- §26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?
- §26.55 How is DBE participation counted toward goals?

Subpart D—Certification Standards

- §26.61 How are burdens of proof allocated in the certification process?
- §26.63 What rules govern group membership determinations?
- §26.65 What rules govern business size determinations?
- §26.67 What rules determine social and economic disadvantage?
- §26.69 What rules govern determinations of ownership?
- §26.71 What rules govern determinations concerning control?
- §26.73 What are other rules affecting certification?

Subpart E—Certification Procedures

- §26.81 What are the requirements for Unified Certification Programs?
- §26.83 What procedures do recipients follow in making certification decisions?
- §26.85 Interstate certification.
- §26.86 What rules govern recipients' denials of initial requests for certification?
- §26.87 What procedures does a recipient use to remove a DBE's eligibility?
- §26.88 Summary suspension of certification.
- §26.89 What is the process for certification appeals to the Department of Transportation?
- §26.91 What actions do recipients take following DOT certification appeal decisions?

Subpart F—Compliance and Enforcement

- §26.101 What compliance procedures apply to recipients?
- §26.103 What enforcement actions apply in FHWA and FTA programs?
- §26.105 What enforcement actions apply in FAA programs?
- §26.107 What enforcement actions apply to firms participating in the DBE program?
- §26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?
- Appendix A to Part 26—Guidance Concerning Good Faith Efforts
- Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form
- Appendix C to Part 26—DBE Business Development Program Guidelines
- Appendix D to Part 26—Mentor-Protégé Program Guidelines
- Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage
- Appendix F to Part 26—Uniform Certification Application Form
- Appendix G to Part 26—Personal Net Worth Statement

AUTHORITY: 23 U.S.C. 304 and 324; 42 U.S.C. 2000d, *et seq.* ; 49 U.S.C. 47107, 47113, 47123; Sec. 1101(b), Pub. L. 105-178, 112 Stat. 107, 113.

SOURCE: 64 FR 5126, Feb. 2, 1999, unless otherwise noted.

[⤴ Back to Top](#)

Subpart A—General

[⤴ Back to Top](#)

§26.1 What are the objectives of this part?

This part seeks to achieve several objectives:

- (a) To ensure nondiscrimination in the award and administration of DOT-assisted contracts in the Department's highway, transit, and airport financial assistance programs;
- (b) To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
- (c) To ensure that the Department's DBE program is narrowly tailored in accordance with applicable law;
- (d) To ensure that only firms that fully meet this part's eligibility standards are permitted to participate as DBEs;
- (e) To help remove barriers to the participation of DBEs in DOT-assisted contracts;
- (f) To promote the use of DBEs in all types of federally-assisted contracts and procurement activities conducted by recipients.
- (g) To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- (h) To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59592, Oct. 2, 2014]

[⤴ Back to Top](#)

§26.3 To whom does this part apply?

(a) If you are a recipient of any of the following types of funds, this part applies to you:

(1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.

(2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.

(3) Airport funds authorized by 49 U.S.C. 47101, *et seq.*

(b) [Reserved]

(c) If you are letting a contract, and that contract is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands, this part does not apply to the contract.

(d) If you are letting a contract in which DOT financial assistance does not participate, this part does not apply to the contract.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59592, Oct. 2, 2014]

[⤴ Back to Top](#)

§26.5 What do the terms used in this part mean?

Affiliation has the same meaning the term has in the Small Business Administration (SBA) regulations, 13 CFR part 121.

(1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:

- (i) One concern controls or has the power to control the other; or
- (ii) A third party or parties controls or has the power to control both; or
- (iii) An identity of interest between or among parties exists such that affiliation may be found.

(2) In determining whether affiliation exists, it is necessary to consider all appropriate factors, including common ownership, common management, and contractual relationships. Affiliates must be considered together in determining whether a concern meets small business size criteria and the statutory cap on the participation of firms in the DBE program.

Alaska Native means a citizen of the United States who is a person of one-fourth degree or more Alaskan Indian (including Tsimshian Indians not enrolled in the Metlaktila Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom a Native village or Native group regards as an Alaska Native if their father or mother is regarded as an Alaska Native.

Alaska Native Corporation (ANC) means any Regional Corporation, Village Corporation, Urban Corporation, or Group Corporation organized under the laws of the State of Alaska in accordance with the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1601, *et seq.*).

Assets mean all the property of a person available for paying debts or for distribution, including one's respective share of jointly held assets. This includes, but is not limited to, cash on hand and in banks, savings accounts, IRA or other retirement accounts, accounts receivable, life insurance, stocks and bonds, real estate, and personal property.

Business, business concern or business enterprise means an entity organized for profit with a place of business located in the United States, and which operates primarily within the United States or which makes a significant contribution to the United States economy through payment of taxes or use of American products, materials, or labor.

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

Contingent Liability means a liability that depends on the occurrence of a future and uncertain event. This includes, but is not limited to, guaranty for debts owed by the applicant concern, legal claims and judgments, and provisions for federal income tax.

Contract means a legally binding relationship obligating a seller to furnish supplies or services (including, but not limited to, construction and professional services) and the buyer to pay for them. For purposes of this part, a lease is considered to be a contract.

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

Days mean calendar days. In computing any period of time described in this part, the day from which the period begins to run is not counted, and when the last day of the period is a Saturday, Sunday, or Federal holiday, the period extends to the next day that is not a Saturday, Sunday, or Federal holiday. Similarly, in circumstances where the recipient's offices are closed for all or part of the last day, the period extends to the next day on which the agency is open.

Department or DOT means the U.S. Department of Transportation, including the Office of the Secretary, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and the Federal Aviation Administration (FAA).

Disadvantaged business enterprise or DBE means a for-profit small business concern—

(1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

(2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

DOT-assisted contract means any contract between a recipient and a contractor (at any tier) funded in whole or in part with DOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land.

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

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

Immediate family member means father, mother, husband, wife, son, daughter, brother, sister, grandfather, grandmother, father-in-law, mother-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under State law.

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

Joint venture means an association of a DBE firm and one or more other firms to carry out a single, for-profit business enterprise, for which the parties combine their property, capital, efforts, skills and knowledge, and in which the DBE is responsible for a distinct, clearly defined portion of the work of the contract and whose share in the capital contribution, control, management, risks, and profits of the joint venture are commensurate with its ownership interest.

Liabilities mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installment accounts, mortgages on real estate, and unpaid taxes.

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

Native Hawaiian Organization means any community service organization serving Native Hawaiians in the State of Hawaii which is a not-for-profit organization chartered by the State of Hawaii, is controlled by Native Hawaiians, and whose business activities will principally benefit such Native Hawaiians.

Noncompliance means that a recipient has not correctly implemented the requirements of this part.

Operating Administration or OA means any of the following parts of DOT: the Federal Aviation Administration (FAA), Federal Highway Administration (FHWA), and Federal Transit Administration (FTA). The "Administrator" of an operating administration includes his or her designees.

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

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.

Primary recipient means a recipient which receives DOT financial assistance and passes some or all of it on to another recipient.

Principal place of business means the business location where the individuals who manage the firm's day-to-day operations spend most working hours. If the offices from which management is directed and where the business records are kept are in different locations, the recipient will determine the principal place of business.

Program means any undertaking on a recipient's part to use DOT financial assistance, authorized by the laws to which this part applies.

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

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

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

Secretary means the Secretary of Transportation or his/her designee.

Set-aside means a contracting practice restricting eligibility for the competitive award of a contract solely to DBE firms.

Small Business Administration or *SBA* means the United States Small Business Administration.

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

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

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a members of groups and without regard to his or her individual qualities. The social disadvantage must stem from circumstances beyond the individual's control.

(1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.

(2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:

(i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;

(ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;

(iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;

(iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;

(v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;

(vi) Women;

(vii) Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

(3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

Spouse means a married person, including a person in a domestic partnership or a civil union recognized under State law.

Transit vehicle manufacturer means any manufacturer whose primary business purpose is to manufacture vehicles specifically built for public mass transportation. Such vehicles include, but are not limited to: Buses, rail cars, trolleys, ferries, and vehicles manufactured specifically for paratransit purposes. Producers of vehicles that receive post-production alterations or retrofitting to be used for public transportation purposes (e.g., so-called cutaway vehicles, vans customized for service to people with disabilities) are also considered transit vehicle manufacturers. Businesses that manufacture, mass-produce, or distribute vehicles solely for personal use and for sale "off the lot" are not considered transit vehicle manufacturers.

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

You refers to a recipient, unless a statement in the text of this part or the context requires otherwise (i.e., 'You must do XYZ' means that recipients must do XYZ).

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 68 FR 35553, June 16, 2003; 76 FR 5096, Jan. 28, 2011; 79 FR 59592, Oct. 2, 2014]

[⬆️ Back to Top](#)

§26.7 What discriminatory actions are forbidden?

(a) You must 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 covered by this part on the basis of race, color, sex, or national origin.

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

[⬆️ Back to Top](#)

§26.9 How does the Department issue guidance and interpretations under this part?

(a) Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with this part 26 and issued after March 4, 1999 express the official positions and views of the Department of Transportation or any of its operating administrations.

(b) The Secretary of Transportation, Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations or written guidance concerning this part. Written interpretations and guidance are valid, and express the official positions and views of the Department of Transportation or any of its operating administrations, only if they are

issued over the signature of the Secretary of Transportation or if they contain the following statement:

The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR part 26.

[72 FR 15617, Apr. 2, 2007]

[Back to Top](#)

§26.11 What records do recipients keep and report?

(a) You must transmit the Uniform Report of DBE Awards or Commitments and Payments, found in Appendix B to this part, at the intervals stated on the form.

(b) You must continue to provide data about your DBE program to the Department as directed by DOT operating administrations.

(c) You must create and maintain a bidders list.

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

(2) You must obtain the following information about DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts:

(i) Firm name;

(ii) Firm address;

(iii) Firm's status as a DBE or non-DBE;

(iv) Age of the firm; and

(v) The annual gross receipts of the firm. You may obtain this information by asking each firm to indicate into what gross receipts bracket they fit (e.g., less than \$500,000; \$500,000-\$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting an exact figure from the firm.

(3) You may acquire the information for your bidders list in a variety of ways. For example, you can collect the data from all bidders, before or after the bid due date. You can conduct a survey that will result in statistically sound estimate of the universe of DBE and non-DBE contractors and subcontractors who seek to work on your Federally-assisted contracts. You may combine different data collection approaches (e.g., collect name and address information from all bidders, while conducting a survey with respect to age and gross receipts information).

(d) You must maintain records documenting a firm's compliance with the requirements of this part. At a minimum, you must keep a complete application package for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records must be retained in accordance with applicable record retention requirements for the recipient's financial assistance agreement. Other certification or compliance related records must be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for the recipient's financial assistance agreement, whichever is longer.

(e) The State department of transportation in each UCP established pursuant to §26.81 of this part must report to the Department of Transportation's Office of Civil Rights, by January 1, 2015, and each year thereafter, the percentage and location in the State of certified DBE firms in the UCP Directory controlled by the following:

(1) Women;

(2) Socially and economically disadvantaged individuals (other than women); and

(3) Individuals who are women and are otherwise socially and economically disadvantaged individuals.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 76 FR 5096, Jan. 28, 2011; 79 FR 59593, Oct. 2, 2014]

[Back to Top](#)

§26.13 What assurances must recipients and contractors make?

(a) Each financial assistance agreement you sign with a DOT operating administration (or a primary recipient) must include the following assurance: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements 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 DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR part 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient 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.).

(b) Each contract you sign with a contractor (and each subcontract the prime contractor signs with a subcontractor) must include the following assurance: The contractor, sub recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR part 26 in the award and administration of DOT-assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate, which may include, but is not limited to:

(1) Withholding monthly progress payments;

(2) Assessing sanctions;

(3) Liquidated damages; and/or

(4) Disqualifying the contractor from future bidding as non-responsible.

[79 FR 59593, Oct. 2, 2014]

[Back to Top](#)

§26.15 How can recipients apply for exemptions or waivers?

(a) You can apply for an exemption from any provision of this part. To apply, you must request the exemption in writing from the Office of the Secretary of Transportation, FHWA, FTA, or FAA. The Secretary will grant the request only if it documents special or exceptional circumstances, not likely to be generally applicable, and not contemplated in connection with the rulemaking that established this part, that make your compliance with a specific provision of this part impractical. You must agree to take any steps that the Department specifies to comply with the intent of the provision from which an exemption is granted. The Secretary will issue a written response to all exemption requests.

(b) You can apply for a waiver of any provision of Subpart B or C of this part including, but not limited to, any provisions regarding administrative requirements, overall goals, contract goals or good faith efforts. Program waivers are for the purpose of authorizing you to operate a DBE program that achieves the objectives of this part by means that may differ from one or more of the requirements of Subpart B or C of this part. To receive a program waiver, you must follow these procedures:

(1) You must apply through the concerned operating administration. The application must include a specific program proposal and address how you will meet the criteria of paragraph (b)(2) of this section. Before submitting your application, you must have had public participation in developing your proposal, including consultation with the DBE community and at least one public hearing. Your application must include a summary of the public participation process and the information gathered through it.

(2) Your application must show that—

(i) There is a reasonable basis to conclude that you could achieve a level of DBE participation consistent with the objectives of this part using different or innovative means other than those that are provided in subpart B or C of this part;

(ii) Conditions in your jurisdiction are appropriate for implementing the proposal;

(iii) Your proposal would prevent discrimination against any individual or group in access to contracting opportunities or other benefits of the program; and

(iv) Your proposal is consistent with applicable law and program requirements of the concerned operating administration's financial assistance program.

(3) The Secretary has the authority to approve your application. If the Secretary grants your application, you may administer your DBE program as provided in your proposal, subject to the following conditions:

(i) DBE eligibility is determined as provided in subparts D and E of this part, and DBE participation is counted as provided in §26.49;

(ii) Your level of DBE participation continues to be consistent with the objectives of this part;

(iii) There is a reasonable limitation on the duration of your modified program; and

(iv) Any other conditions the Secretary makes on the grant of the waiver.

(4) The Secretary may end a program waiver at any time and require you to comply with this part's provisions. The Secretary may also extend the waiver, if he or she determines that all requirements of paragraphs (b)(2) and (3) of this section continue to be met. Any such extension shall be for no longer than period originally set for the duration of the program.

[Back to Top](#)

Subpart B—Administrative Requirements for DBE Programs for Federally-Assisted Contracting

[Back to Top](#)

§26.21 Who must have a DBE program?

(a) If you are in one of these categories and let DOT-assisted contracts, you must have a DBE program meeting the requirements of this part:

(1) All FHWA primary recipients receiving funds authorized by a statute to which this part applies;

(2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year;

(3) FAA recipients receiving grants for airport planning or development who will award prime contracts the cumulative total value of which exceeds \$250,000 in FAA funds in a Federal fiscal year.

(b)(1) You must submit a DBE program conforming to this part by August 31, 1999 to the concerned operating administration (OA). Once the OA has approved your program, the approval counts for all of your DOT-assisted programs (except that goals are reviewed by the particular operating administration that provides funding for your DOT-assisted contracts).

(2) You do not have to submit regular updates of your DBE programs, as long as you remain in compliance. However, you must submit significant changes in the program for approval.

(c) You are not eligible to receive DOT financial assistance unless DOT has approved your DBE program and you are in compliance with it and this part. You must continue to carry out your program until all funds from DOT financial assistance have been expended.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 79 FR 59593, Oct. 2, 2014]

[Back to Top](#)

§26.23 What is the requirement for a policy statement?

You must issue a signed and dated policy statement that expresses your commitment to your DBE program, states its objectives, and outlines responsibilities for its implementation. You must circulate the statement throughout your organization and to the DBE and non-DBE business communities that perform work on your DOT-assisted contracts.

[Back to Top](#)

§26.25 What is the requirement for a liaison officer?

You must have a DBE liaison officer, who shall have direct, independent access to your Chief Executive Officer concerning DBE program matters. The liaison officer shall be responsible for implementing all aspects of your DBE program. You must also have adequate staff to administer the program in compliance with this part.

[Back to Top](#)

§26.27 What efforts must recipients make concerning DBE financial institutions?

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

[Back to Top](#)

§26.29 What prompt payment mechanisms must recipients have?

(a) You must establish, as part of your DBE program, a contract clause to require prime contractors to pay subcontractors for satisfactory performance of their contracts no later than 30 days from receipt of each payment you make to the prime contractor.

(b) You must ensure prompt and full payment of retainage from the prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed. You must use one of the following methods to comply with this requirement:

(1) You may decline to hold retainage from prime contractors and prohibit prime contractors from holding retainage from subcontractors.

(2) You may decline to hold retainage from prime contractors and require a contract clause obligating prime contractors to make prompt and full payment of any retainage kept by prime contractor to the subcontractor within 30 days after the subcontractor's work is satisfactorily completed.

(3) You may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after your payment to the prime contractor.

(c) For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.

(d) Your DBE program must provide appropriate means to enforce the requirements of this section. These means may include appropriate penalties for failure to comply, the terms and conditions of which you set. Your program may also provide that any delay or postponement of payment among the parties may take place only for good cause, with your prior written approval.

(e) You may also establish, as part of your DBE program, any of the following additional mechanisms to ensure prompt payment:

(1) A contract clause that requires prime contractors to include in their subcontracts language providing that prime contractors and subcontractors will use appropriate alternative dispute resolution mechanisms to resolve payment disputes. You may specify the nature of such mechanisms.

(2) A contract clause providing that the prime contractor will not be reimbursed for work performed by subcontractors unless and until the prime contractor ensures that the subcontractors are promptly paid for the work they have performed.

(3) Other mechanisms, consistent with this part and applicable state and local law, to ensure that DBEs and other contractors are fully and promptly paid.

[68 FR 35553, June 16, 2003]

[Back to Top](#)

§26.31 What information must you include in your DBE directory?

(a) In the directory required under §26.81(g) of this Part, you must list all firms eligible to participate as DBEs in your program. In the listing for each firm, you must include its address, phone number, and the types of work the firm has been certified to perform as a DBE.

(b) You must list each type of work for which a firm is eligible to be certified by using the most specific NAICS code available to describe each type of work. You must make any changes to your current directory entries necessary to meet the requirement of this paragraph (a) by August 26, 2011.

[76 FR 5096, Jan. 28, 2011]

[Back to Top](#)

§26.33 What steps must a recipient take to address overconcentration of DBEs in certain types of work?

(a) If you determine that DBE firms are so overconcentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work, you must devise appropriate measures to address this overconcentration.

(b) These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs, and other appropriate measures designed to assist DBEs in performing work outside of the specific field in which you have determined that non-DBEs are unduly burdened. You may also consider varying your use of contract goals, to the extent consistent with §26.51, to ensure that non-DBEs are not unfairly prevented from competing for subcontracts.

(c) You must obtain the approval of the concerned DOT operating administration for your determination of overconcentration and the measures you devise to address it. Once approved, the measures become part of your DBE program.

[⤴ Back to Top](#)

§26.35 What role do business development and mentor-protégé programs have in the DBE program?

(a) You may or, if an operating administration directs you to, you must establish a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. You may require a DBE firm, as a condition of receiving assistance through the BDP, to agree to terminate its participation in the DBE program after a certain time has passed or certain objectives have been reached. See Appendix C of this part for guidance on administering BDP programs.

(b) As part of a BDP or separately, you may establish a “mentor-protégé” program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm.

(1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.

(2) During the course of the mentor-protégé relationship, you must:

(i) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than one half of its goal on any contract let by the recipient; and

(ii) Not award DBE credit to a non-DBE mentor firm for using its own protégé firm for more than every other contract performed by the protégé firm.

(3) For purposes of making determinations of business size under this part, you must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix D of this part for guidance concerning the operation of mentor-protégé programs.

(c) Your BDPs and mentor-protégé programs must be approved by the concerned operating administration before you implement them. Once approved, they become part of your DBE program.

[⤴ Back to Top](#)

§26.37 What are a recipient's responsibilities for monitoring the performance of other program participants?

(a) You must implement appropriate mechanisms to ensure compliance with the part's requirements by all program participants (e.g., applying legal and contract remedies available under Federal, state and local law). You must set forth these mechanisms in your DBE program.

(b) Your DBE program must also include a monitoring and enforcement mechanism to ensure that work committed to DBEs at contract 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. This mechanism must include a written certification that you have reviewed contracting records and monitored work sites in your state for this purpose. The monitoring to which this paragraph refers may be conducted in conjunction with monitoring of contract performance for other purposes (e.g., close-out reviews for a contract).

(c) This mechanism must provide for a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. In your reports of DBE participation to the Department, you must display both commitments and attainments.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 76 FR 5097, Jan. 28, 2011]

[⤴ Back to Top](#)

§26.39 Fostering small business participation.

(a) Your DBE program must include an element to structure contracting requirements to facilitate competition by small business concerns, taking all reasonable steps to eliminate obstacles to their participation, including unnecessary and unjustified bundling of contract requirements that may preclude small business participation in procurements as prime contractors or subcontractors.

(b) This element must be submitted to the appropriate DOT operating administration for approval as a part of your DBE program by February 28, 2012. As part of this program element you may include, but are not limited to, the following strategies:

(1) Establishing a race-neutral small business set-aside for prime contracts under a stated amount (e.g., \$1 million).

(2) In multi-year design-build contracts or other large contracts (e.g., for “megaprojects”) requiring bidders on the prime contract to specify elements of the contract or specific subcontracts that are of a size that small businesses, including DBEs, can reasonably perform.

(3) On prime contracts not having DBE contract goals, requiring the prime contractor to provide subcontracting opportunities of a size that small businesses, including DBEs, can reasonably perform, rather than self-performing all the work involved.

(4) Identifying alternative acquisition strategies and structuring procurements to facilitate the ability of consortia or joint ventures consisting of small businesses, including DBEs, to compete for and perform prime contracts.

(5) To meet the portion of your overall goal you project to meet through race-neutral measures, ensuring that a reasonable number of prime contracts are of a size that small businesses, including DBEs, can reasonably perform.

(c) You must actively implement your program elements to foster small business participation. Doing so is a requirement of good faith implementation of your DBE program.

[76 FR 5097, Jan. 28, 2011]

[⤴ Back to Top](#)

Subpart C—Goals, Good Faith Efforts, and Counting

[⤴ Back to Top](#)

§26.41 What is the role of the statutory 10 percent goal in this program?

(a) The statutes authorizing this program provide that, except to the extent the Secretary determines otherwise, not less

than 10 percent of the authorized funds are to be expended with DBEs.

(b) This 10 percent goal is an aspirational goal at the national level, which the Department uses as a tool in evaluating and monitoring DBEs' opportunities to participate in DOT-assisted contracts.

(c) The national 10 percent goal does not authorize or require recipients 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.

[⬆️ Back to Top](#)

§26.43 Can recipients use set-asides or quotas as part of this program?

(a) You are not permitted to use quotas for DBEs on DOT-assisted contracts subject to this part.

(b) You may not set-aside contracts for DBEs on DOT-assisted contracts subject to this part, except that, in limited and extreme circumstances, you may use set-asides when no other method could be reasonably expected to redress egregious instances of discrimination.

[⬆️ Back to Top](#)

§26.45 How do recipients set overall goals?

(a)(1) Except as provided in paragraph (a)(2) of this section, you must set an overall goal for DBE participation in your DOT-assisted contracts.

(2) If you are a FTA or FAA recipient who reasonably anticipates awarding (excluding transit vehicle purchases) \$250,000 or less in FTA or FAA funds in prime contracts in a Federal fiscal year, you are not required to develop overall goals for FTA or FAA respectively for that fiscal year. However, if you have an existing DBE program, it must remain in effect and you must seek to fulfill the objectives outlined in §26.1.

(b) Your overall goal must be based on demonstrable evidence of the availability of ready, willing and able DBEs relative to all businesses ready, willing and able to participate on your DOT-assisted contracts (hereafter, the "relative availability of DBEs"). The goal must reflect your determination of the level of DBE participation you would expect absent the effects of discrimination. You cannot simply rely on either the 10 percent national goal, your previous overall goal or past DBE participation rates in your program without reference to the relative availability of DBEs in your market.

(c) *Step 1.* You must begin your goal setting process by determining a base figure for the relative availability of DBEs. The following are examples of approaches that you may take toward determining a base figure. These examples are provided as a starting point for your goal setting process. Any percentage figure derived from one of these examples should be considered a basis from which you begin when examining all evidence available in your jurisdiction. These examples are not intended as an exhaustive list. Other methods or combinations of methods to determine a base figure may be used, subject to approval by the concerned operating administration.

(1) *Use DBE Directories and Census Bureau Data.* Determine the number of ready, willing and able DBEs in your market from your DBE directory. Using the Census Bureau's County Business Pattern (CBP) data base, determine the number of all ready, willing and able businesses available in your market that perform work in the same NAICS codes. (Information about the CBP data base may be obtained from the Census Bureau at their web site, www.census.gov/epcd/cbp/view/cbpview.html.) Divide the number of DBEs by the number of all businesses to derive a base figure for the relative availability of DBEs in your market.

(2) *Use a bidders list.* Determine the number of DBEs that have bid or quoted (successful and unsuccessful) on your DOT-assisted prime contracts or subcontracts in the past three years. Determine the number of all businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. Divide the number of DBE bidders and quoters by the number of all businesses to derive a base figure for the relative availability of DBEs in your market. When using this approach, you must establish a mechanism (documented in your goal submission) to directly capture data on DBE and non-DBE prime and subcontractors that submitted bids or quotes on your DOT-assisted contracts.

(3) *Use data from a disparity study.* Use a percentage figure derived from data in a valid, applicable disparity study.

(4) *Use the goal of another DOT recipient.* If another DOT recipient in the same, or substantially similar, market has set an overall goal in compliance with this rule, you may use that goal as a base figure for your goal.

(5) *Alternative methods.* Except as otherwise provided in this paragraph, you may use other methods to determine a base figure for your overall goal. Any methodology you choose must be based on demonstrable evidence of local market conditions and be designed to ultimately attain a goal that is rationally related to the relative availability of DBEs in your market. The exclusive use of a list of prequalified contractors or plan holders, or a bidders list that does not comply with the requirements of paragraph (c)(2) of this section, is not an acceptable alternative means of determining the availability of DBEs.

(d) *Step 2.* Once you have calculated a base figure, you must examine all of the evidence available in your jurisdiction to determine what adjustment, if any, is needed to the base figure to arrive at your overall goal. If the evidence does not suggest an adjustment is necessary, then no adjustment shall be made.

(1) There are many types of evidence that must be considered when adjusting the base figure. These include:

(i) The current capacity of DBEs to perform work in your DOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;

(ii) Evidence from disparity studies conducted anywhere within your jurisdiction, to the extent it is not already accounted for in your base figure; and

(iii) If your base figure is the goal of another recipient, you must adjust it for differences in your local market and your contracting program.

(2) If available, you must consider evidence from related fields that affect the opportunities for DBEs to form, grow and compete. These include, but are not limited to:

(i) Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in your program;

(ii) Data on employment, self-employment, education, training and union apprenticeship programs, to the extent you can relate it to the opportunities for DBEs to perform in your program.

(3) If you attempt to make an adjustment to your base figure to account for the continuing effects of past discrimination (often called the “but for” factor) or the effects of an ongoing DBE program, the adjustment must be based on demonstrable evidence that is logically and directly related to the effect for which the adjustment is sought.

(e) Once you have determined a percentage figure in accordance with paragraphs (c) and (d) of this section, you should express your overall goal as follows:

(1) If you are an FHWA recipient, as a percentage of all Federal-aid highway funds you will expend in FHWA-assisted contracts in the forthcoming three fiscal years.

(2) If you are an FTA or FAA recipient, as a percentage of all FT or FAA funds (exclusive of FTA funds to be used for the purchase of transit vehicles) that you will expend in FTA or FAA-assisted contracts in the three forthcoming fiscal years.

(3) In appropriate cases, the FHWA, FTA or FAA Administrator may permit or require you to express your overall goal as a percentage of funds for a particular grant or project or group of grants and/or projects, including entire projects. Like other overall goals, a project goal may be adjusted to reflect changed circumstances, with the concurrence of the appropriate operating administration.

(i) A project goal is an overall goal, and must meet all the substantive and procedural requirements of this section pertaining to overall goals.

(ii) A project goal covers the entire length of the project to which it applies.

(iii) The project goal should include a projection of the DBE participation anticipated to be obtained during each fiscal year covered by the project goal.

(iv) The funds for the project to which the project goal pertains are separated from the base from which your regular overall goal, applicable to contracts not part of the project covered by a project goal, is calculated.

(f)(1)(i) If you set your overall goal on a fiscal year basis, you must submit it to the applicable DOT operating administration by August 1 at three-year intervals, based on a schedule established by the FHWA, FTA, or FAA, as applicable, and posted on that agency’s Web site.

(ii) You may adjust your three-year overall goal during the three-year period to which it applies, in order to reflect changed circumstances. You must submit such an adjustment to the concerned operating administration for review and approval.

(iii) The operating administration may direct you to undertake a review of your goal if necessary to ensure that the goal continues to fit your circumstances appropriately.

(iv) While you are required to submit an overall goal to FHWA, FTA, or FAA only every three years, the overall goal and the provisions of Sec. 26.47(c) apply to each year during that three-year period.

(v) You may make, for informational purposes, projections of your expected DBE achievements during each of the three years covered by your overall goal. However, it is the overall goal itself, and not these informational projections, to which the provisions of section 26.47(c) of this part apply.

(2) If you are a recipient and set your overall goal on a project or grant basis as provided in paragraph (e)(3) of this section, you must submit the goal for review at a time determined by the FHWA, FTA or FAA Administrator, as applicable.

(3) You must include with your overall goal submission a description of the methodology you used to establish the goal, including your base figure and the evidence with which it was calculated, and the adjustments you made to the base figure and the evidence you relied on for the adjustments. You should also include a summary listing of the relevant available evidence in your jurisdiction and, where applicable, an explanation of why you did not use that evidence to adjust your base figure. You must also include your projection of the portions of the overall goal you expect to meet through race-neutral and race-conscious measures, respectively (see 26.51(c)).

(4) You are not required to obtain prior operating administration concurrence with your overall goal. However, if the operating administration’s review suggests that your overall goal has not been correctly calculated or that your method for calculating goals is inadequate, the operating administration may, after consulting with you, adjust your overall goal or require that you do so. The adjusted overall goal is binding on you. In evaluating the adequacy or soundness of the methodology used to derive the overall goal, the operating administration will be guided by goal setting principles and best practices identified by the Department in guidance issued pursuant to §26.9.

(5) If you need additional time to collect data or take other steps to develop an approach to setting overall goals, you may request the approval of the concerned operating administration for an interim goal and/or goal-setting mechanism. Such a mechanism must:

(i) Reflect the relative availability of DBEs in your local market to the maximum extent feasible given the data available to you; and

(ii) Avoid imposing undue burdens on non-DBEs.

(6) Timely submission and operating administration approval of your overall goal is a condition of eligibility for DOT financial assistance.

(7) If you fail to establish and implement goals as provided in this section, you are not in compliance with this part. If you establish and implement goals in a way different from that provided in this part, you are not in compliance with this part. If you fail to comply with this requirement, you are not eligible to receive DOT financial assistance.

(g)(1) In establishing an overall goal, you must provide for consultation and publication. This includes:

(i) Consultation with minority, women’s and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, the effects of discrimination on opportunities for DBEs, and your efforts to establish a level playing field for the participation of DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g., a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process, and it must occur before you are required to submit your methodology to the operating administration for review pursuant to paragraph (f) of this section. You must document in your goal submission the consultation process you engaged in. Notwithstanding paragraph (f)(4) of this section, you may not implement your proposed goal until you have complied with this requirement.

(ii) A published notice announcing your proposed overall goal before submission to the operating administration on

August 1st. The notice must be posted on your official Internet Web site and may be posted in any other sources (e.g., minority-focused media, trade association publications). If the proposed goal changes following review by the operating administration, the revised goal must be posted on your official Internet Web site.

(2) At your discretion, you may inform the public that the proposed overall goal and its rationale are available for inspection during normal business hours at your principal office and for a 30-day comment period. Notice of the comment period must include addresses to which comments may be sent. The public comment period will not extend the August 1st deadline set in paragraph (f) of this section.

(h) Your overall goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

[64 FR 5126, Feb. 2, 1999, as amended at 64 FR 34570, June 28, 1999; 65 FR 68951, Nov. 15, 2000; 68 FR 35553, June 16, 2003; 75 FR 5536, Feb. 3, 2010; 76 FR 5097, Jan. 28, 2011; 79 FR 59593, Oct. 2, 2014]

[⬆️ Back to Top](#)

§26.47 Can recipients be penalized for failing to meet overall goals?

(a) You cannot be penalized, or treated by the Department as being in noncompliance with this rule, because your DBE participation falls short of your overall goal, unless you have failed to administer your program in good faith.

(b) If you do not have an approved DBE program or overall goal, or if you fail to implement your program in good faith, you are in noncompliance with this part.

(c) If the awards and commitments shown on your Uniform Report of Awards or Commitments and Payments at the end of any fiscal year are less than the overall goal applicable to that fiscal year, you must do the following in order to be regarded by the Department as implementing your DBE program in good faith:

(1) Analyze in detail the reasons for the difference between the overall goal and your awards and commitments in that fiscal year;

(2) Establish specific steps and milestones to correct the problems you have identified in your analysis and to enable you to meet fully your goal for the new fiscal year;

(3)(i) If you are a state highway agency; one of the 50 largest transit authorities as determined by the FTA; or an Operational Evolution Partnership Plan airport or other airport designated by the FAA, you must submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (c)(1) and (2) of this section to the appropriate operating administration for approval. If the operating administration approves the report, you will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

(ii) As a transit authority or airport not meeting the criteria of paragraph (c)(3)(i) of this section, you must retain analysis and corrective actions in your records for three years and make it available to FTA or FAA on request for their review.

(4) FHWA, FTA, or FAA may impose conditions on the recipient as part of its approval of the recipient's analysis and corrective actions including, but not limited to, modifications to your overall goal methodology, changes in your race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

(5) You may be regarded as being in noncompliance with this Part, and therefore subject to the remedies in §26.103 or §26.105 of this part and other applicable regulations, for failing to implement your DBE program in good faith if any of the following things occur:

(i) You do not submit your analysis and corrective actions to FHWA, FTA, or FAA in a timely manner as required under paragraph (c)(3) of this section;

(ii) FHWA, FTA, or FAA disapproves your analysis or corrective actions; or

(iii) You do not fully implement the corrective actions to which you have committed or conditions that FHWA, FTA, or FAA has imposed following review of your analysis and corrective actions.

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

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011]

[⬆️ Back to Top](#)

§26.49 How are overall goals established for transit vehicle manufacturers?

(a) If you are an FTA recipient, you must require in your DBE program that each transit vehicle manufacturer, as a condition of being authorized to bid or propose on FTA-assisted transit vehicle procurements, certify that it has complied with the requirements of this section. You do not include FTA assistance used in transit vehicle procurements in the base amount from which your overall goal is calculated.

(1) Only those transit vehicle manufacturers listed on FTA's certified list of Transit Vehicle Manufacturers, or that have submitted a goal methodology to FTA that has been approved or has not been disapproved, at the time of solicitation are eligible to bid.

(2) A TVM's failure to implement the DBE Program in the manner as prescribed in this section and throughout 49 CFR part 26 will be deemed as non-compliance, which will result in removal from FTA's certified TVMs list, resulting in that manufacturer becoming ineligible to bid.

(3) FTA recipient's failure to comply with the requirements set forth in paragraph (a) of this section may result in formal enforcement action or appropriate sanction as determined by FTA (e.g., FTA declining to participate in the vehicle procurement).

(4) FTA recipients are required to submit within 30 days of making an award, the name of the successful bidder, and the total dollar value of the contract in the manner prescribed in the grant agreement.

(b) If you are a transit vehicle manufacturer, you must establish and submit for FTA's approval an annual overall percentage goal.

(1) In setting your overall goal, you should be guided, to the extent applicable, by the principles underlying §26.45. The base from which you calculate this goal is the amount of FTA financial assistance included in transit vehicle contracts you will bid on during the fiscal year in question, less the portion(s) attributable to the manufacturing process performed entirely by the transit vehicle manufacturer's own forces.

(i) You must consider and include in your base figure all domestic contracting opportunities made available to non-DBE firms; and

(ii) You must exclude from this base figure funds attributable to work performed outside the United States and its territories, possessions, and commonwealths.

(iii) In establishing an overall goal, the transit vehicle manufacturer must provide for public participation. This includes consultation with interested parties consistent with §26.45(g).

(2) The requirements of this part with respect to submission and approval of overall goals apply to you as they do to recipients.

(c) Transit vehicle manufacturers awarded must comply with the reporting requirements of §26.11 of this part including the requirement to submit the Uniform Report of Awards or Commitments and Payments, in order to remain eligible to bid on FTA assisted transit vehicle procurements.

(d) Transit vehicle manufacturers must implement all other applicable requirements of this part, except those relating to UCPs and DBE certification procedures.

(e) If you are an FHWA or FAA recipient, you may, with FHWA or FAA approval, use the procedures of this section with respect to procurements of vehicles or specialized equipment. If you choose to do so, then the manufacturers of this equipment must meet the same requirements (including goal approval by FHWA or FAA) as transit vehicle manufacturers must meet in FTA-assisted procurements.

(f) As a recipient you may, with FTA approval, establish project-specific goals for DBE participation in the procurement of transit vehicles in lieu of complying through the procedures of this section.

[79 FR 59594, Oct. 2, 2014]

[⬆️ Back to Top](#)

§26.51 What means do recipients use to meet overall goals?

(a) You must meet the maximum feasible portion of your overall goal by using race-neutral means of facilitating race-neutral DBE participation. Race-neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal.

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

(1) Arranging solicitations, times for the presentation of bids, quantities, specifications, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses, by means such as those provided under §26.39 of this part.

(2) Providing assistance in overcoming limitations such as inability to obtain bonding or financing (e.g., by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs, and other small businesses, obtain bonding and financing);

(3) Providing technical assistance and other services;

(4) Carrying out information and communications programs on contracting procedures and specific contract opportunities (e.g., ensuring the inclusion of DBEs, and other small businesses, on recipient mailing lists for bidders; ensuring the dissemination to bidders on prime contracts of lists of potential subcontractors; provision of information in languages other than English, where appropriate);

(5) Implementing a supportive services program to develop and improve immediate and long-term business management, record keeping, and financial and accounting capability for DBEs and other small businesses;

(6) Providing services to help DBEs, and other small businesses, improve long-term development, increase opportunities to participate in a variety of kinds of work, handle increasingly significant projects, and achieve eventual self-sufficiency;

(7) Establishing a program to assist new, start-up firms, particularly in fields in which DBE participation has historically been low;

(8) Ensuring distribution of your DBE directory, through print and electronic means, to the widest feasible universe of potential prime contractors; and

(9) Assisting DBEs, and other small businesses, to develop their capability to utilize emerging technology and conduct business through electronic media.

(c) Each time you submit your overall goal for review by the concerned operating administration, you must also submit your projection of the portion of the goal that you expect to meet through race-neutral means and your basis for that projection. This projection is subject to approval by the concerned operating administration, in conjunction with its review of your overall goal.

(d) You must establish contract goals to meet any portion of your overall goal you do not project being able to meet using race-neutral means.

(e) The following provisions apply to the use of contract goals:

(1) You may use contract goals only on those DOT-assisted contracts that have subcontracting possibilities.

(2) You are not required to set a contract goal on every DOT-assisted contract. You are not required to set each contract goal at the same percentage level as the overall goal. The goal for a specific contract may be higher or lower than that percentage level of the overall goal, depending on such factors as the type of work involved, the location of the work, and the availability of DBEs for the work of the particular contract. However, over the period covered by your overall goal, you must set contract goals so that they will cumulatively result in meeting any portion of your overall goal you do not project being able to meet through the use of race-neutral means.

(3) Operating administration approval of each contract goal is not necessarily required. However, operating administrations may review and approve or disapprove any contract goal you establish.

(4) Your contract goals must provide for participation by all certified DBEs and must not be subdivided into group-specific goals.

(f) To ensure that your DBE program continues to be narrowly tailored to overcome the effects of discrimination, you must adjust your use of contract goals as follows:

(1) If your approved projection under paragraph (c) of this section estimates that you can meet your entire overall goal for a given year through race-neutral means, you must implement your program without setting contract goals during that year, unless it becomes necessary in order to meet your overall goal.

Example to paragraph (f)(1): Your overall goal for Year 1 is 12 percent. You estimate that you can obtain 12 percent or more DBE participation through the use of race-neutral measures, without any use of contract goals. In this case, you do not set any contract goals for the contracts that will be performed in Year 1. However, if part way through Year 1, your DBE awards or commitments are not at a level that would permit you to achieve your overall goal for Year 1, you could begin setting race-conscious DBE contract goals during the remainder of the year as part of your obligation to implement your program in good faith.

(2) If, during the course of any year in which you are using contract goals, you determine that you will exceed your overall goal, you must reduce or eliminate the use of contract goals to the extent necessary to ensure that the use of contract goals does not result in exceeding the overall goal. If you determine that you will fall short of your overall goal, then you must make appropriate modifications in your use of race-neutral and/or race-conscious measures to allow you to meet the overall goal.

Example to paragraph (f)(2): In Year II, your overall goal is 12 percent. You have estimated that you can obtain 5 percent DBE participation through use of race-neutral measures. You therefore plan to obtain the remaining 7 percent participation through use of DBE goals. By September, you have already obtained 11 percent DBE participation for the year. For contracts let during the remainder of the year, you use contract goals only to the extent necessary to obtain an additional one percent DBE participation. However, if you determine in September that your participation for the year is likely to be only 8 percent total, then you would increase your use of race-neutral and/or race-conscious means during the remainder of the year in order to achieve your overall goal.

(3) If the DBE participation you have obtained by race-neutral means alone meets or exceeds your overall goals for two consecutive years, you are not required to make a projection of the amount of your goal you can meet using such means in the next year. You do not set contract goals on any contracts in the next year. You continue using only race-neutral means to meet your overall goals unless and until you do not meet your overall goal for a year.

Example to paragraph (f)(3): Your overall goal for Years I and Year II is 10 percent. The DBE participation you obtain through race-neutral measures alone is 10 percent or more in each year. (For this purpose, it does not matter whether you obtained additional DBE participation through using contract goals in these years.) In Year III and following years, you do not need to make a projection under paragraph (c) of this section of the portion of your overall goal you expect to meet using race-neutral means. You simply use race-neutral means to achieve your overall goals. However, if in Year VI your DBE participation falls short of your overall goal, then you must make a paragraph (c) projection for Year VII and, if necessary, resume use of contract goals in that year.

(4) If you obtain DBE participation that exceeds your overall goal in two consecutive years through the use of contract goals (*i.e.*, not through the use of race-neutral means alone), you must reduce your use of contract goals proportionately in the following year.

Example to paragraph (f)(4): In Years I and II, your overall goal is 12 percent, and you obtain 14 and 16 percent DBE participation, respectively. You have exceeded your goals over the two-year period by an average of 25 percent. In Year III, your overall goal is again 12 percent, and your paragraph (c) projection estimates that you will obtain 4 percent DBE participation through race-neutral means and 8 percent through contract goals. You then reduce the contract goal projection by 25 percent (*i.e.*, from 8 to 6 percent) and set contract goals accordingly during the year. If in Year III you obtain 11 percent participation, you do not use this contract goal adjustment mechanism for Year IV, because there have not been two *consecutive* years of exceeding overall goals.

(g) In any year in which you project meeting part of your goal through race-neutral means and the remainder through contract goals, you must maintain data separately on DBE achievements in those contracts with and without contract goals, respectively. You must report this data to the concerned operating administration as provided in §26.11.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011; 79 FR 59595, Oct. 2, 2014]

[Back to Top](#)

§26.53 What are the good faith efforts procedures recipients follow in situations where there are contract goals?

(a) When you have established a DBE contract goal, you must award the contract only to a bidder/offeror who makes good faith efforts to meet it. You must determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following things:

(1) Documents that it has obtained enough DBE participation to meet the goal; or

(2) Documents that it made adequate good faith efforts to meet the goal, even though it did not succeed in obtaining enough DBE participation to do so. If the bidder/offeror does document adequate good faith efforts, you must not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See Appendix A of this part for guidance in determining the adequacy of a bidder/offeror's good faith efforts.

(b) In your solicitations for DOT-assisted contracts for which a contract goal has been established, you must require the following:

(1) Award of the contract will be conditioned on meeting the requirements of this section;

(2) All bidders or offerors will be required to submit the following information to the recipient, at the time provided in paragraph (b)(3) of this section:

(i) The names and addresses of DBE firms that will participate in the contract;

(ii) A description of the work that each DBE will perform. To count toward meeting a goal, each DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;

(iii) The dollar amount of the participation of each DBE firm participating;

(iv) Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

(v) Written confirmation from each listed DBE firm that it is participating in the contract in the kind and amount of work

provided in the prime contractor's commitment.

(vi) If the contract goal is not met, evidence of good faith efforts (see Appendix A of this part). The documentation of good faith efforts must include copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract; and

(3)(i) At your discretion, the bidder/offeror must present the information required by paragraph (b)(2) of this section—

(A) Under sealed bid procedures, as a matter of responsiveness, or with initial proposals, under contract negotiation procedures; or

(B) No later than 7 days after bid opening as a matter of responsibility. The 7 days shall be reduced to 5 days beginning January 1, 2017.

(ii) Provided that, in a negotiated procurement, including a design-build procurement, the bidder/offeror may make a contractually binding commitment to meet the goal at the time of bid submission or the presentation of initial proposals but provide the information required by paragraph (b)(2) of this section before the final selection for the contract is made by the recipient.

(c) You must make sure all information is complete and accurate and adequately documents the bidder/offeror's good faith efforts before committing yourself to the performance of the contract by the bidder/offeror.

(d) If you determine that the apparent successful bidder/offeror has failed to meet the requirements of paragraph (a) of this section, you must, before awarding the contract, provide the bidder/offeror an opportunity for administrative reconsideration.

(1) As part of this reconsideration, the bidder/offeror must have the opportunity to provide written documentation or argument concerning the issue of whether it met the goal or made adequate good faith efforts to do so.

(2) Your decision on reconsideration must be made by an official who did not take part in the original determination that the bidder/offeror failed to meet the goal or make adequate good faith efforts to do so.

(3) The bidder/offeror must have the opportunity to meet in person with your reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do so.

(4) You must send the bidder/offeror a written decision on reconsideration, explaining the basis for finding that the bidder did or did not meet the goal or make adequate good faith efforts to do so.

(5) The result of the reconsideration process is not administratively appealable to the Department of Transportation.

(e) In a "design-build" or "turnkey" contracting situation, in which the recipient lets a master contract to a contractor, who in turn lets subsequent subcontracts for the work of the project, a recipient may establish a goal for the project. The master contractor then establishes contract goals, as appropriate, for the subcontracts it lets. Recipients must maintain oversight of the master contractor's activities to ensure that they are conducted consistent with the requirements of this part.

(f)(1)(i) You must require that a prime contractor not terminate a DBE subcontractor listed in response to paragraph (b)(2) of this section (or an approved substitute DBE firm) without your prior written consent. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, a non-DBE firm, or with another DBE firm.

(ii) You must include in each prime contract a provision stating:

(A) That the contractor shall utilize the specific DBEs listed to perform the work and supply the materials for which each is listed unless the contractor obtains your written consent as provided in this paragraph (f); and

(B) That, unless your consent is provided under this paragraph (f), the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

(2) You may provide such written consent only if you agree, for reasons stated in your concurrence document, that the prime contractor has good cause to terminate the DBE firm.

(3) For purposes of this paragraph, good cause includes the following circumstances:

(i) The listed DBE subcontractor fails or refuses to execute a written contract;

(ii) The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

(iii) The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.

(iv) The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

(v) The listed DBE subcontractor 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;

(vi) You have determined that the listed DBE subcontractor is not a responsible contractor;

(vii) The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

(viii) The listed DBE is ineligible to receive DBE credit for the type of work required;

(ix) A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

(x) Other documented good cause that you determine compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract so that the prime contractor can self-perform the work for which the DBE contractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.

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

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

(6) In addition to post-award terminations, the provisions of this section apply to preaward deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.

(g) When a DBE subcontractor is terminated as provided in paragraph (f) of this section, or fails to complete its work on the contract for any reason, you must require the prime contractor to make good faith efforts to find another DBE subcontractor to substitute for the original DBE. These good faith efforts shall be directed at finding another DBE to perform at least the same amount of work under the contract as the DBE that was terminated, to the extent needed to meet the contract goal you established for the procurement. The good faith efforts shall be documented by the contractor. If the recipient requests documentation under this provision, the contractor shall submit the documentation within 7 days, which may be extended for an additional 7 days if necessary at the request of the contractor, and the recipient shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

(h) You must include in each prime contract the contract clause required by §26.13(b) stating that failure by the contractor to carry out the requirements of this part is a material breach of the contract and may result in the termination of the contract or such other remedies set forth in that section you deem appropriate if the prime contractor fails to comply with the requirements of this section.

(i) You must apply the requirements of this section to DBE bidders/offerors for prime contracts. In determining whether a DBE bidder/offeror for a prime contract has met a contract goal, you count the work the DBE has committed to performing with its own forces as well as the work that it has committed to be performed by DBE subcontractors and DBE suppliers.

(j) You must require the contractor awarded the contract to make available upon request a copy of all DBE subcontracts. The subcontractor shall ensure that all subcontracts or an agreement with DBEs to supply labor or materials require that the subcontract and all lower tier subcontractors be performed in accordance with this part's provisions.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5098, Jan. 28, 2011; 79 FR 59595, Oct. 2, 2014]

[⬆ Back to Top](#)

§26.55 How is DBE participation counted toward goals?

(a) When a DBE participates in a contract, you count only the value of the work actually performed by the DBE toward DBE goals.

(1) Count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (a)(2) of this section) that is performed by the DBE's own forces. Include the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor purchases or leases from the prime contractor or its affiliate).

(2) Count the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services, or for providing bonds or insurance specifically required for the performance of a DOT-assisted contract, toward DBE goals, provided you determine the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

(3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward DBE goals only if the DBE's subcontractor is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

(b) When a DBE performs as a participant in a joint venture, count a portion of the total dollar value of the contract equal to the distinct, clearly defined portion of the work of the contract that the DBE performs with its own forces toward DBE goals.

(c) Count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract.

(1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, you must evaluate the amount of work subcontracted, industry practices, whether the amount the firm is to be paid under the 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.

(2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, you must examine similar transactions, particularly those in which DBEs do not participate.

(3) If a DBE does not perform or exercise responsibility for at least 30 percent of the total cost of its contract with its own work force, or the DBE subcontracts a greater portion of the work of a contract than would be expected on the basis of normal industry practice for the type of work involved, you must presume that it is not performing a commercially useful function.

(4) When a DBE is presumed not to be performing a commercially useful function as provided in paragraph (c)(3) of this section, the DBE may present evidence to rebut this presumption. You may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices.

(5) Your decisions on commercially useful function matters are subject to review by the concerned operating administration, but are not administratively appealable to DOT.

(d) Use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

(1) The DBE must be responsible for the management and supervision of the entire trucking operation for which it is responsible on a particular contract, and there cannot be a contrived arrangement for the purpose of meeting DBE goals.

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

(3) The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures, and operates using drivers it employs.

(4) The DBE may lease trucks from another DBE firm, including an owner-operator who is certified as a DBE. The DBE who leases trucks from another DBE receives credit for the total value of the transportation services the lessee DBE provides on the contract.

(5) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement. If a recipient chooses this approach, it must obtain written consent from the appropriate DOT operating administration.

Example to paragraph (d)(5): DBE Firm X uses two of its own trucks on a contract. It leases two trucks from DBE Firm Y and six trucks equipped with drivers from non-DBE Firm Z. DBE credit would be awarded for the total value of transportation services provided by Firm X and Firm Y, and may also be awarded for the total value of transportation services provided by four of the six trucks provided by Firm Z. In all, full credit would be allowed for the participation of eight trucks. DBE credit could be awarded only for the fees or commissions pertaining to the remaining trucks Firm X receives as a result of the lease with Firm Z.

(6) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

Example to paragraph (d)(6): DBE Firm X uses two of its own trucks on a contract. It leases two additional trucks from non-DBE Firm Z. Firm X uses its own employees to drive the trucks leased from Firm Z. DBE credit would be awarded for the total value of the transportation services provided by all four trucks.

(7) For purposes of this paragraph (d), a lease must indicate that the DBE has exclusive use of and control over the truck. This does not preclude the leased truck from working for others during the term of the lease with the consent of the DBE, so long as the lease gives the DBE absolute priority for use of the leased truck. Leased trucks must display the name and identification number of the DBE.

(e) Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

(1)(i) If the materials or supplies are obtained from a DBE manufacturer, count 100 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this paragraph (e)(1), a manufacturer is a firm that operates or maintains a factory or establishment that produces, on the premises, the materials, supplies, articles, or equipment required under the contract and of the general character described by the specifications.

(2)(i) If the materials or supplies are purchased from a DBE regular dealer, count 60 percent of the cost of the materials or supplies toward DBE goals.

(ii) For purposes of this section, a regular dealer is a firm that owns, operates, or maintains a store, warehouse, or other establishment in which the materials, supplies, articles or equipment of the general character described by the specifications and required under the contract are bought, kept in stock, and regularly sold or leased to the public in the usual course of business.

(A) To be a regular dealer, the firm must be an established, regular business that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

(B) A person may be a regular dealer in such bulk items as petroleum products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph (e)(2)(ii) if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.

(C) Packagers, brokers, manufacturers' representatives, or other persons who arrange or expedite transactions are not regular dealers within the meaning of this paragraph (e)(2).

(3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, count the entire amount of fees or commissions charged for assistance in the procurement of the materials and supplies, or fees or transportation charges for the delivery of materials or supplies required on a job site, toward DBE goals, provided you determine the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. Do not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

(4) You must determine the amount of credit awarded to a firm for the provisions of materials and supplies (e.g., whether a firm is acting as a regular dealer or a transaction expeditor) on a contract-by-contract basis.

(f) If a firm is not currently certified as a DBE in accordance with the standards of subpart D of this part at the time of the execution of the contract, do not count the firm's participation toward any DBE goals, except as provided for in §26.87(i).

(g) Do not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward your overall goal.

(h) Do not count the participation of a DBE subcontractor toward a contractor's final compliance with its DBE obligations on a contract until the amount being counted has actually been paid to the DBE.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35554, June 16, 2003; 79 FR 59595, Oct. 2, 2014]

[Back to Top](#)

Subpart D—Certification Standards

[Back to Top](#)

§26.61 How are burdens of proof allocated in the certification process?

(a) In determining whether to certify a firm as eligible to participate as a DBE, you must apply the standards of this subpart.

(b) The firm seeking certification has the burden of demonstrating to you, by a preponderance of the evidence, that it meets the requirements of this subpart concerning group membership or individual disadvantage, business size, ownership, and control.

(c) You must rebuttably presume that members of the designated groups identified in §26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to you that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in §26.67(a). Applicants do have the obligation to provide you information concerning their economic disadvantage (see §26.67).

(d) Individuals who are not presumed to be socially and economically disadvantaged, and individuals concerning whom the presumption of disadvantage has been rebutted, have the burden of proving to you, by a preponderance of the evidence, that they are socially and economically disadvantaged. (See Appendix E of this part.)

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

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

[Back to Top](#)

§26.63 What rules govern group membership determinations?

(a)(1) If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see §26.61(c)), you have a well founded reason to question the individual's claim of membership in that group, you must require the individual to present additional evidence that he or she is a member of the group.

(2) You must provide the individual a written explanation of your reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (b) of this section.

(3) In implementing this section, you must take special care to ensure that you do not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate §26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR part 21.

(b) In making such a determination, you must 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. You may require the applicant to produce appropriate documentation of group membership.

(1) If you determine that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.

(2) Your decisions concerning membership in a designated group are subject to the certification appeals procedure of §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35554, June 16, 2003]

[Back to Top](#)

§26.65 What rules govern business size determinations?

(a) To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. As a recipient, you must apply current SBA business size standard(s) found in 13 CFR part 121 appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts, including the primary industry classification of the applicant.

(b) Even if it meets the requirements of paragraph (a) of this section, a firm is not an eligible DBE in any Federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years, in excess of \$23.98 million.

(c) The Department adjusts the number in paragraph (b) of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment.

[74 FR 15224, Apr. 3, 2009, as amended at 79 FR 59596, Oct. 2, 2014]

[Back to Top](#)

§26.67 What rules determine social and economic disadvantage?

(a) *Presumption of disadvantage.* (1) You must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are women, Black Americans, Hispanic Americans, Native Americans, Asian-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. You must require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

(2)(i) You must require 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 he or she has a personal net worth that does not exceed \$1.32 million.

(ii) You must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. To meet this requirement, you must use the DOT personal net worth form provided in appendix G to this part without change or revision. Where necessary to accurately determine an individual's personal net worth, you 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). Requests for additional information shall not be unduly burdensome or intrusive.

(iii) In determining an individual's net worth, you must observe the following requirements:

(A) Exclude an individual's ownership interest in the applicant firm;

(B) Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances. Recipients must ensure that home equity loan balances are included in the equity calculation and not as a separate liability on the individual's personal net worth form. Exclusions for net worth purposes are not exclusions for asset valuation or access to capital and credit purposes.

(C) Do not use a contingent liability to reduce an individual's net worth.

(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, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

(iv) Notwithstanding any provision of Federal or State law, you must 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. Provided, that you must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other State to which the individual's firm has applied for certification under §26.85 of this part.

(b) *Rebuttal of presumption of disadvantage.* (1) An individual's presumption of economic disadvantage may be rebutted in two ways.

(i) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section shows that the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. You are not required to have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

Example to paragraph (b)(1)(i): An individual with very high assets and significant liabilities may, in accounting terms, have a PNW of less than \$1.32 million. However, the person's assets collectively (e.g., high income level, a very expensive house, a yacht, extensive real or personal property holdings) may lead a reasonable person to conclude that he or she is not economically disadvantaged. The recipient may rebut the individual's presumption of economic disadvantage under these circumstances, as provided in this section, even though the individual's PNW is less than \$1.32 million.

(ii)(A) If the statement of personal net worth and supporting documentation that an individual submits under paragraph (a)(2) of this section demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as a certifying agency, you may consider factors that include, but are not limited to, the following:

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

(B) You must have a proceeding under paragraph (b)(2) of this section in order to rebut the presumption of economic disadvantage in this case.

(2) If you have a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged you may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. Your proceeding must follow the procedures of §26.87.

(3) In such a proceeding, you have the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. You may require the individual to produce information relevant to the determination of his or her disadvantage.

(4) 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, 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 PNW remains above that amount.

(c) *Transfers within two years.* (1) Except as set forth in paragraph (c)(2) of this section, recipients must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of recipient's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(d) *Individual determinations of social and economic disadvantage.* 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. You must make a case-by-case determination of 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 you, 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, use the guidance found in Appendix E of this part. You must require that applicants provide sufficient information to permit determinations under the guidance of appendix E of this part.

[79 FR 59596, Oct. 2, 2014]

[⬆️ Back to Top](#)

§26.69 What rules govern determinations of ownership?

(a) In determining whether the socially and economically disadvantaged participants in a firm own the firm, you must consider all the facts in the record viewed as a whole, including the origin of all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.

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

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

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

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

(c)(1) The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When the contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan.

(2) Insufficient contributions include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value for the firm.

(3) The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risks and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by the substance, not merely the form, of arrangements. Any terms or practices that give a non-disadvantaged individual or firm a priority or superior right to a firm's profits, compared to the disadvantaged owner(s), are grounds for denial.

(4) 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.

Examples to paragraph (c): (i) An individual pays \$100 to acquire a majority interest in a firm worth \$1 million. The individual's contribution to capital would not be viewed as substantial.

(ii) A 51% disadvantaged owner and a non-disadvantaged 49% owner contribute \$100 and \$10,000, respectively, to acquire a firm grossing \$1 million. This may be indicative of a pro forma arrangement that does not meet the requirements of (c)(1).

(iii) The disadvantaged owner of a DBE applicant firm spends \$250 to file articles of incorporation and obtains a \$100,000 loan, but makes only nominal or sporadic payments to repay the loan. This type of contribution is not of a continuing nature.

(d) All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph (d), 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.

(e) 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.

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

(1) The owner's expertise must be—

(i) In a specialized field;

(ii) Of outstanding quality;

(iii) In areas critical to the firm's operations;

(iv) Indispensable to the firm's potential success;

(v) Specific to the type of work the firm performs; and

(vi) Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

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

(g) You must 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 the individual—

(1) As the result of a final property settlement or court order in a divorce or legal separation, provided that no term or condition of the agreement or divorce decree is inconsistent with this section; or

(2) Through inheritance, or otherwise because of the death of the former owner.

(h)(1) You must presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is—

(i) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

(ii) Involved in the same or a similar line of business; or

(iii) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

(2) To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to you, by clear and convincing evidence, that—

- (i) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
- (ii) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.

(i) You must 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, you must 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. You do 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.

(j) You may consider the following factors in determining the ownership of a firm. However, you must 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 paragraph (h) of 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, you must 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.

[64 FR 5126, Feb. 2, 1999, as amended at 79 FR 59597, Oct. 2, 2014]

[Back to Top](#)

§26.71 What rules govern determinations concerning control?

(a) In determining whether socially and economically disadvantaged owners control a firm, you must consider all the facts in the record, viewed as a whole.

(b) 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, you must scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

(2) You must 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) You must 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, you must consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

(c) 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 §26.69(j)(2).

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

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

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

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

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

(f) 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.

(g) 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.

(h) 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, you must not deny certification solely on the ground that the person lacks the license or credential. However, you 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.

(i)(1) You 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. You 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.

(2) In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, you 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.

(j) 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.

(k)(1) 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, you must make a judgment about the control the socially and economically disadvantaged owner exercises vis-a-vis other persons involved in the business as you do in other situations, without regard to whether or not the other persons are immediate family members.

(2) If you 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.

(l) 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 nondisadvantaged 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 you, 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 nondisadvantaged individual who formerly owned and/or controlled the firm.

(m) In determining whether a firm is controlled by its socially and economically disadvantaged owners, you may consider whether the firm owns equipment necessary to perform its work. However, you must 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.

(n) You must 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 need demonstrate to you only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. You must not require that the firm be recertified or submit a new application for certification, but you must 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. If you choose, you may also, in addition to applying the appropriate NAICS code, apply a 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 DOT 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. If your Directory does not list types of work for any firm in a manner consistent with this paragraph (a)(1), you must update the Directory entry for that firm to meet the requirements of this paragraph (a)(1) by August 28, 2011.

(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 the UCP 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 must not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

(o) A business operating under a franchise or license agreement may be certified if it meets the standards in this subpart and the franchisor or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, you should 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.

(p) 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.

(q) 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.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5099, Jan. 28, 2011; 79 FR 59597, Oct. 2, 2014]

[⬆️ Back to Top](#)

§26.73 What are other rules affecting certification?

(a)(1) Consideration of whether a firm performs a commercially useful function or is a regular dealer pertains solely to counting toward DBE goals the participation of firms that have already been certified as DBEs. Except as provided in paragraph (a)(2) of this section, you must not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

(2) You 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.

(b)(1) You must evaluate the eligibility of a firm on the basis of present circumstances. You must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of this part.

(2) You must 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.

(c) DBE firms and firms seeking DBE certification shall cooperate fully with your requests (and DOT 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.

(d) 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.

(e) 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.

(1) 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, you may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.

(2) You 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 you 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, you 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 you 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 §26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

(f) 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.

(g) You must not require a DBE firm to be prequalified as a condition for certification.

(h) 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 §26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in §26.71.

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

(1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:

(i) 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;

(ii) 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

(iii) The subsidiary, joint venture, or partnership entity has been certified by the Small Business Administration under the 8(a) or small disadvantaged business program.

(2) As a recipient to whom an ANC-related entity applies for certification, you do not use the DOT uniform application form (see Appendix F of this part). You must obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph (i)(1) of this section. You must also obtain sufficient information about the firm to allow you to administer your program (e.g., information that would appear in your DBE Directory).

(3) If an ANC-related firm does not meet all the conditions of paragraph (i)(1) of this section, then it must meet the requirements of paragraph (h) of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5099, Jan. 28, 2011; 79 FR 59598, Oct. 2, 2014]

[Back to Top](#)

Subpart E—Certification Procedures

[Back to Top](#)

§26.81 What are the requirements for Unified Certification Programs?

(a) You and all other DOT recipients in your state must participate in a Unified Certification Program (UCP).

(1) Within three years of March 4, 1999, you and the other recipients in your state must sign an agreement establishing the UCP for that state and submit the agreement to the Secretary for approval. The Secretary may, on the basis of extenuating circumstances shown by the recipients in the state, extend this deadline for no more than one additional year.

(2) The agreement must provide for the establishment of a UCP meeting all the requirements of this section. The agreement must specify that the UCP will follow all certification procedures and standards of this part, on the same basis as recipients; that the UCP shall cooperate fully with oversight, review, and monitoring activities of DOT and its operating administrations; and that the UCP shall implement DOT directives and guidance concerning certification matters. The agreement shall also commit recipients to ensuring that the UCP has sufficient resources and expertise to carry out the requirements of this part. The agreement shall include an implementation schedule ensuring that the UCP is fully operational no later than 18 months following the approval of the agreement by the Secretary.

(3) Subject to approval by the Secretary, the UCP in each state may take any form acceptable to the recipients in that state.

(4) The Secretary shall review the UCP and approve it, disapprove it, or remand it to the recipients in the state for revisions. A complete agreement which is not disapproved or remanded within 180 days of its receipt is deemed to be accepted.

(5) If you and the other recipients in your state fail to meet the deadlines set forth in this paragraph (a), you shall have the opportunity to make an explanation to the Secretary why a deadline could not be met and why meeting the deadline was beyond your control. If you fail to make such an explanation, or the explanation does not justify the failure to meet the deadline, the Secretary shall direct you to complete the required action by a date certain. If you and the other recipients fail to carry out this direction in a timely manner, you are collectively in noncompliance with this part.

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

(1) Certification decisions by the UCP shall be binding on all DOT recipients within the state.

(2) 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.

(3) 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 this part.

(c) All certifications by UCPs shall be pre-certifications; i.e., certifications that have been made final before the due date for bids or offers on which a firm seeks to participate as a DBE.

(d) A UCP is not required to process an application for certification from a firm having its principal place of business outside the state if the firm is not certified by the UCP in the state in which it maintains its principal place of business. The "home state" UCP shall share its information and documents concerning the firm with other UCPs that are considering the firm's application.

(e) Subject to DOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or DOT recipient.

(f) Pending the establishment of UCPs meeting the requirements of this section, you may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. You may also grant reciprocity to other recipient's certification decisions.

(g) Each UCP shall maintain a unified DBE directory containing, for all firms certified by the UCP (including those from

other states certified under the provisions of this part), the information required by §26.31. The UCP shall make the directory available to the public electronically, on the internet, as well as in print. The UCP shall update the electronic version of the directory by including additions, deletions, and other changes as soon as they are made and shall revise the print version of the Directory at least once a year.

(h) Except as otherwise specified in this section, all provisions of this subpart and subpart D of this part pertaining to recipients also apply to UCPs.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5100, Jan. 28, 2011]

[⬆️ Back to Top](#)

§26.83 What procedures do recipients follow in making certification decisions?

- (a) You must ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.
- (b) You must determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. When a UCP is formed, the UCP must meet all the requirements of subpart D of this part and this subpart that recipients are required to meet.
- (c)(1) You must take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:
 - (i) Perform an on-site visit to the firm's principal place of business. You must interview the principal officers and review their résumés and/or work histories. You may interview key personnel of the firm if necessary. You must also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in your jurisdiction or local area. You may rely upon the site visit report of any other recipient with respect to a firm applying for certification;
 - (ii) Analyze 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 by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certificates of Good Standing
 - (iii) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;
 - (iv) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;
 - (v) 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.
 - (vi) 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;
 - (vii) 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 3 years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.
 - (viii) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in §26.85 of this part.
- (2) You must use the application form provided in Appendix F to this part without change or revision. However, you may provide in your DBE program, with the written approval of the concerned operating administration, for supplementing the form by requesting specified additional information not inconsistent with this part.
- (3) You must make sure that the applicant attests to the accuracy and truthfulness of the information on the application form. This shall be done either in the form of an affidavit sworn to by the applicant before a person who is authorized by State law to administer oaths or in the form of an unsworn declaration executed under penalty of perjury of the laws of the United States.
- (4) You must review all information on the form prior to making a decision about the eligibility of the firm. You may request clarification of information contained in the application at any time in the application process.
- (d) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information you have obtained about that firm (e.g., including application materials or the report of a site visit, if you have made one to the firm), you must promptly make the information available to the other recipient.
- (e) [Reserved]
- (f) Subject to the approval of the concerned operating administration as part of your DBE program, you may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases.
- (g) You must safeguard 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.
- (h)(1) Once you have certified a DBE, it shall remain certified until and unless you have removed its certification, in whole or in part, through the procedures of §26.87 of this part, except as provided in §26.67(b)(1) of this part.
- (2) You may not require DBEs to reapply for certification or undergo a recertification process. However, you may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate in light of changed circumstances (e.g., of the kind requiring notice under paragraph (i) of this section or relating to suspension of certification under §26.88), a complaint, or other information concerning the firm's eligibility. If information comes to your attention that leads you to question the firm's eligibility, you may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.
- (i) If you are a DBE, you must inform the recipient or UCP in writing of any change in circumstances affecting your ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in your application form.
- (1) Changes in management responsibility among members of a limited liability company are covered by this requirement.
- (2) You must attach supporting documentation describing in detail the nature of such changes.

(3) 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. You must provide the written notification within 30 days of the occurrence of the change. If you fail to make timely notification of such a change, you will be deemed to have failed to cooperate under §26.109(c).

(j) If you are a DBE, you must provide to the recipient, every year on the anniversary of the date of your certification, an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States. This affidavit must affirm that 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 you have notified the recipient under paragraph (i) of this section. The affidavit shall specifically affirm that your firm continues to meet SBA business size criteria and the overall gross receipts cap of this part, documenting this affirmation with supporting documentation of your firm's size and gross receipts (e.g., submission of Federal tax returns). If you fail to provide this affidavit in a timely manner, you will be deemed to have failed to cooperate under §26.109(c).

(k) If you are a recipient, you must make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. You 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. You may establish a different time frame in your DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. Your 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 DOT under §26.89.

(l) As a recipient or UCP, you must advise each applicant within 30 days from your receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.

(m) Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before you have issued a decision on the application, the applicant can resubmit the application at any time. As a recipient or UCP, you may not apply the waiting period provided under §26.86(c) of this part before allowing the applicant to resubmit its application. However, you may place the reapplication at the "end of the line," behind other applications that have been made since the firm's previous application was withdrawn. You may also apply the waiting period provided under §26.86(c) of this part to a firm that has established a pattern of frequently withdrawing applications before you make a decision.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35555, June 16, 2003; 76 FR 5100, Jan. 28, 2011; 79 FR 59598, Oct. 2, 2014]

[Back to Top](#)

§26.85 Interstate certification.

(a) This section applies with respect to any firm that is currently certified in its home state.

(b) When a firm currently certified in its home state ("State A") applies to another State ("State B") for DBE certification, State B may, at its discretion, accept State A's certification and certify the firm, without further procedures.

(1) To obtain certification in this manner, the firm must provide to State B a copy of its certification notice from State A.

(2) Before certifying the firm, State B must confirm that the firm has a current valid certification from State A. State B can do so by reviewing State A's electronic directory or obtaining written confirmation from State A.

(c) In any situation in which State B chooses not to accept State A's certification of a firm as provided in paragraph (b) of this section, as the applicant firm you must provide the information in paragraphs (c)(1) through (4) of this section to State B.

(1) You must provide to State B a complete copy of the application form, all supporting documents, and any other information you have submitted to State A or any other state related to your firm's certification. This includes affidavits of no change (see §26.83(j)) and any notices of changes (see §26.83(i)) that you have submitted to State A, as well as any correspondence you have had with State A's UCP or any other recipient concerning your application or status as a DBE firm.

(2) You must also provide to State B any notices or correspondence from states other than State A relating to your status as an applicant or certified DBE in those states. For example, if you have been denied certification or decertified in State C, or subject to a decertification action there, you must inform State B of this fact and provide all documentation concerning this action to State B.

(3) If you have filed a certification appeal with DOT (see §26.89), you must inform State B of the fact and provide your letter of appeal and DOT's response to State B.

(4) You must submit an affidavit sworn to by the firm's owners before a person who is authorized by State law to administer oaths or an unsworn declaration executed under penalty of perjury of the laws of the United States.

(i) This affidavit must affirm that you have submitted all the information required by 49 CFR 26.85(c) and the information is complete and, in the case of the information required by §26.85(c)(1), is an identical copy of the information submitted to State A.

(ii) If the on-site report from State A supporting your certification in State A is more than three years old, as of the date of your application to State B, State B may require that your affidavit also affirm that the facts in the on-site report remain true and correct.

(d) As State B, when you receive from an applicant firm all the information required by paragraph (c) of this section, you must take the following actions:

(1) Within seven days contact State A and request a copy of the site visit review report for the firm (see §26.83(c)(1)), any updates to the site visit review, and any evaluation of the firm based on the site visit. As State A, you must transmit this information to State B within seven days of receiving the request. A pattern by State B of not making such requests in a timely manner or by "State A" or any other State of not complying with such requests in a timely manner is noncompliance with this Part.

(2) Determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in your State. Reasons for making such a determination may include the following:

(i) Evidence that State A's certification was obtained by fraud;

(ii) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

(iii) State A's certification was factually erroneous or was inconsistent with the requirements of this part;

(iv) The State law of State B requires a result different from that of the State law of State A.

(v) The information provided by the applicant firm did not meet the requirements of paragraph (c) of this section.

(3) If, as State B, unless you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.

(4) If, as State B, you have determined that there is good cause to believe that State A's certification is erroneous or should not apply in your State, you must, no later than 60 days from the date on which you received from the applicant firm all the information required by paragraph (c) of this section, send to the applicant firm a notice stating the reasons for your determination.

(i) This notice must state with particularity the specific reasons why State B 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 State B with respect to these reasons.

(ii) The firm may elect to respond in writing, to request an in-person meeting with State B's decision maker to discuss State B's objections to the firm's eligibility, or both. If the firm requests a meeting, as State B you must schedule the meeting to take place within 30 days of receiving the firm's request.

(iii) The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the requirements of this Part with respect to the particularized issues raised by State B's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.

(iv) The decision maker for State B must be an individual who is thoroughly familiar with the provisions of this Part concerning certification.

(v) State B must 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.

(vi) The firm's application for certification is stayed pending the outcome of this process.

(vii) A decision under this paragraph (d)(4) may be appealed to the Departmental Office of Civil Rights under s§26.89 of this part.

(e) As State B, if you have not received from State A a copy of the site visit review report by a date 14 days after you have made a timely request for it, you may hold action required by paragraphs (d)(2) through (4) of this section in abeyance pending receipt of the site visit review report. In this event, you must, no later than 30 days from the date on which you received from an applicant firm all the information required by paragraph (c) of this section, notify the firm in writing of the delay in the process and the reason for it.

(f)(1) As a UCP, when you deny a firm's application, reject the application of a firm certified in State A or any other State in which the firm is certified, through the procedures of paragraph (d)(4) of this section, or decertify a firm, in whole or in part, you must make an entry in the Department of Transportation Office of Civil Rights' (DOCR's) Ineligibility Determination Online Database. You must enter the following information:

(i) The name of the firm;

(ii) The name(s) of the firm's owner(s);

(iii) The type and date of the action;

(iv) The reason for the action.

(2) As a UCP, you must check the DOCR Web site at least once every month to determine whether any firm that is applying to you for certification or that you have already certified is on the list.

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

(g) You must implement the requirements of this section beginning January 1, 2012.

[76 FR 5100, Jan. 28, 2011]

[⬆️ Back to Top](#)

§26.86 What rules govern recipients' denials of initial requests for certification?

(a) When you deny a request by a firm, which is not currently certified with you, to be certified as a DBE, you must provide 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 must be made available to the applicant, on request.

(b) [Reserved]

(c) When a firm is denied certification, you must establish a time period of no more than twelve months that must elapse before the firm may reapply to the recipient for certification. You may provide, in your DBE program, subject to approval by the concerned operating administration, a shorter waiting period for reapplication. The time period for reapplication begins to run on the date the explanation required by paragraph (a) of this section is received by the firm. An applicant's appeal of your decision to the Department pursuant to §26.89 does not extend this period.

(d) When you make an administratively final denial of certification concerning a firm, the firm may appeal the denial to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999. Redesignated and amended at 68 FR 35555, June 16, 2003; 79 FR 59598, Oct. 2, 2014]

[⬆️ Back to Top](#)

§26.87 What procedures does a recipient use to remove a DBE's eligibility?

(a) *Ineligibility complaints.* (1) Any person may file with you a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. You are 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 must be protected as provided in §26.109(b).

(2) You must review your records concerning the firm, any material provided by the firm and the complainant, and other available information. You may request additional information from the firm or conduct any other investigation that you deem necessary.

(3) If you determine, based on this review, that there is reasonable cause to believe that the firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. If you determine that such reasonable cause does not exist, you must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(b) *Recipient-initiated proceedings.* If, based on notification by the firm of a change in its circumstances or other information that comes to your attention, you determine that there is reasonable cause to believe that a currently certified firm is ineligible, you must provide written notice to the firm that you propose to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

(c) *DOT directive to initiate proceeding.* (1) If the concerned operating administration determines that information in your certification records, or other information available to the concerned operating administration, provides reasonable cause to believe that a firm you certified does not meet the eligibility criteria of this part, the concerned operating administration may direct you to initiate a proceeding to remove the firm's certification.

(2) The concerned operating administration must provide you and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

(3) You must immediately commence and prosecute a proceeding to remove eligibility as provided by paragraph (b) of this section.

(d) *Hearing.* When you notify a firm that there is reasonable cause to remove its eligibility, as provided in paragraph (a), (b), or (c) of this section, you must 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.

(1) In such a proceeding, you bear the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of this part.

(2) You must maintain a complete record of the hearing, by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to DOT under §26.89, you must provide a transcript of the hearing to DOT and, on request, to the firm. You must retain the original record of the hearing. You may charge the firm only for the cost of copying the record.

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

(e) *Separation of functions.* You must 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.

(1) Your method of implementing this requirement must be made part of your DBE program.

(2) The decisionmaker must be an individual who is knowledgeable about the certification requirements of your DBE program and this part.

(3) Before a UCP is operational in its state, a small airport or small transit authority (*i.e.*, an airport or transit authority serving an area with less than 250,000 population) is required to meet this requirement only to the extent feasible.

(f) *Grounds for decision.* You may base a decision to remove a firm's eligibility only on one or more of the following grounds:

(1) Changes in the firm's circumstances since the certification of the firm by the recipient that render the firm unable to meet the eligibility standards of this part;

(2) Information or evidence not available to you at the time the firm was certified;

(3) Information relevant to eligibility that has been concealed or misrepresented by the firm;

(4) A change in the certification standards or requirements of the Department since you certified the firm;

(5) Your decision to certify the firm was clearly erroneous;

(6) The firm has failed to cooperate with you (see §26.109(c));

(7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see §26.73(a)(2)); or

(8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph (g) of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph (d) of this section.

(g) *Notice of decision.* Following your decision, you must provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice must inform the firm of the consequences of your decision and of the availability of an appeal to the Department of Transportation under §26.89. You must send copies of the notice to the complainant in an ineligibility complaint or the concerned operating administration that had directed you to initiate the proceeding. Provided that, when sending such a notice to a complainant other than a DOT operating administration, you must not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

(h) [Reserved]

(i) *Status of firm during proceeding.* (1) A firm remains an eligible DBE during the pendency of your proceeding to remove its eligibility.

(2) The firm does not become ineligible until the issuance of the notice provided for in paragraph (g) of this section.

(j) *Effects of removal of eligibility.* When you remove a firm's eligibility, you must take the following action:

(1) When a prime contractor has made a commitment to using the ineligible firm, or you have made a commitment to using a DBE prime contractor, but a subcontract or contract has not been executed before you issue the decertification notice provided for in paragraph (g) of this section, the ineligible firm does not count toward the contract goal or overall goal. You must direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to you that it has made a good faith effort to do so.

(2) If a prime contractor has executed a subcontract with the firm before you have notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where you have let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after you issued the notice of its ineligibility shall not count toward your overall goal, but may count toward the contract goal.

(3) *Exception:* If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, you may continue to count its participation on that contract toward overall and contract goals.

(k) *Availability of appeal.* When you make an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to the Department under §26.89.

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011; 79 FR 59599, Oct. 2, 2014]

[⬆ Back to Top](#)

§26.88 Summary suspension of certification.

(a) A recipient shall immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

(b)(1) A recipient may immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstances that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify the recipient or UCP in writing of any material change in circumstances as required by §26.83(i) of this part or fails to timely file an affidavit of no change under §26.83(j).

(2) In determining the adequacy of the evidence to issue a suspension under paragraph (b)(1) of this section, the recipient 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.

(c) The concerned operating administration may direct the recipient to take action pursuant to paragraph (a) or (b) this section if it determines that information available to it is sufficient to warrant immediate suspension.

(d) When a firm is suspended pursuant to paragraph (a) or (b) of this section, the recipient shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.

(e) Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under §26.87 of this part to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.

(f) While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted 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 commercially useful function under the existing contract.

(g) 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 the recipient information demonstrating that the firm is eligible notwithstanding its changed circumstances. Within 30 days of receiving this information, the recipient must either lift the suspension and reinstate the firm's certification or commence a decertification action under §26.87 of this part. If the recipient commences a decertification proceeding, the suspension remains in effect during the proceeding.

(h) The decision to immediately suspend a DBE under paragraph (a) or (b) of this section is not appealable to the US Department of Transportation. The failure of a recipient to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (g) of this section, is appealable to the U.S. Department of Transportation under §26.89 of this part, as a constructive decertification.

[79 FR 59599, Oct. 2, 2014]

[⬆ Back to Top](#)

§26.89 What is the process for certification appeals to the Department of Transportation?

(a)(1) If you are a firm that is denied certification or whose eligibility is removed by a recipient, including SBA-certified firms, you may make an administrative appeal to the Department.

(2) If you are a complainant in an ineligibility complaint to a recipient (including the concerned operating administration in the circumstances provided in §26.87(c)), you may appeal to the Department if the recipient 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.

(3) Send appeals to the following address: U.S. Department of Transportation, Departmental Office of Civil Rights, 1200 New Jersey Avenue SE., Washington, DC 20590-0001.

(b) Pending the Department's decision in the matter, the recipient's decision remains in effect. The Department does not stay the effect of the recipient's decision while it is considering an appeal.

(c) If you want to file an appeal, you must send a letter to the Department within 90 days of the date of the recipient's final decision, including information and setting forth a full and specific statement as to why the decision is erroneous, what significant fact that the recipient failed to consider, or what provisions of this Part the recipient did not properly apply. The Department may accept an appeal filed later than 90 days after the date of the decision if the Department determines that there was good cause for the late filing of the appeal or in the interest of justice.

(d) When it receives an appeal, the Department requests a copy of the recipient's complete administrative record in the matter. If you are the recipient, you must provide the administrative record, including a hearing transcript, within 20 days of the Department's request. The Department may extend this time period on the basis of a recipient's showing of good cause. To facilitate the Department's review of a recipient's decision, you must 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 you 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.

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

(f) As a recipient, when you provide supplementary information to the Department, you shall 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. The Department makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.

(1) The Department affirms your decision unless it determines, based on the entire administrative record, that your decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification.

(2) If the Department determines, after reviewing the entire administrative record, that your decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, the Department reverses your decision and directs you to certify the firm or remove its eligibility, as appropriate. You must take the action directed by the Department's decision immediately upon receiving written notice of it.

(3) The Department is not required to reverse your decision if the Department 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.

(4) 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, the Department may remand the record to you with instructions seeking clarification or augmentation of the record before making a finding. The Department may also remand a case to you for further proceedings consistent with Department instructions concerning the proper application of the provisions of this part.

(5) The Department does not uphold your decision based on grounds not specified in your decision.

(6) The Department's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

(7) The Department provides written notice of its decision to you, 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 (see paragraph (d) of this section). The Department will also notify the SBA in writing when DOT 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 Department's decision, including specific references to the evidence in the record that supports each reason for the decision.

(8) The Department's policy is to make its decision within 180 days of receiving the complete administrative record. If the Department does not make its decision within this period, the Department 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.

(g) All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

[64 FR 5126, Feb. 2, 1999, as amended at 65 FR 68951, Nov. 15, 2000; 68 FR 35556, June 16, 2003; 73 FR 33329, June 12, 2008; 79 FR 59599, Oct. 2, 2014]

[Back to Top](#)

§26.91 What actions do recipients take following DOT certification appeal decisions?

(a) If you are the recipient from whose action an appeal under §26.89 is taken, the decision is binding. It is not binding on other recipients.

(b) If you are a recipient to which a DOT determination under §26.89 is applicable, you must take the following action:

(1) If the Department determines that you erroneously certified a firm, you must remove the firm's eligibility on receipt of the determination, without further proceedings on your part. Effective on the date of your receipt of the Department's determination, the consequences of a removal of eligibility set forth in §26.87(i) take effect.

(2) If the Department determines that you erroneously failed to find reasonable cause to remove the firm's eligibility, you must expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in §26.87.

(3) If the Department determines that you erroneously declined to certify or removed the eligibility of the firm, you must certify the firm, effective on the date of your receipt of the written notice of Department's determination.

(4) If the Department determines that you erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, you must take appropriate corrective action as determined by the Department.

(5) If the Department affirms your determination, no further action is necessary.

(c) Where DOT has upheld your 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 §26.87. Such recipients must not remove the firm's eligibility absent such a proceeding. Where DOT has reversed

your denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the DOT decision.

[⬆️ Back to Top](#)

Subpart F—Compliance and Enforcement

[⬆️ Back to Top](#)

§26.101 What compliance procedures apply to recipients?

(a) If you fail to comply with any requirement of this part, you may be subject to formal enforcement action under §26.103 or §26.105 or appropriate program sanctions by the concerned operating administration, 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 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.

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

[⬆️ Back to Top](#)

§26.103 What enforcement actions apply in FHWA and FTA programs?

The provisions of this section apply to enforcement actions under FHWA and FTA programs:

(a) *Noncompliance complaints.* Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned operating administration's Office of Civil Rights. If you want to file a complaint, you must do so no later than 180 days after the date of the alleged violation or the date on which you learned of a continuing course of conduct in violation of this part. In response to your written request, the Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The Office of Civil Rights may protect the confidentiality of your identity as provided in §26.109(b). Complaints under this part are limited to allegations of violation of the provisions of this part.

(b) *Compliance reviews.* The concerned operating administration may review the recipient's compliance with this part at any time, including reviews of paperwork and on-site reviews, as appropriate. The Office of Civil Rights may direct the operating administration to initiate a compliance review based on complaints received.

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

(d) *Conciliation.* (1) If you request conciliation, the appropriate DOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of your request. The appropriate DOT office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

(2) If you and the appropriate DOT office sign a conciliation agreement, then the matter is regarded as closed and you are regarded as being in compliance. The conciliation agreement sets forth the measures you have taken or will take to ensure compliance. While a conciliation agreement is in effect, you remain eligible for FHWA or FTA financial assistance.

(3) The concerned operating administration shall monitor your implementation of the conciliation agreement and ensure that its terms are complied with. If you fail to carry out the terms of a conciliation agreement, you are in noncompliance.

(4) If you do not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (d)(1) of this section, then enforcement proceedings begin.

(e) *Enforcement actions.* (1) Enforcement actions are taken as provided in this subpart.

(2) Applicable findings in enforcement proceedings are binding on all DOT offices.

[⬆️ Back to Top](#)

§26.105 What enforcement actions apply in FAA programs?

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

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

(c) Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR part 16 with the Federal Aviation Administration Office of Chief Counsel.

[⬆️ Back to Top](#)

§26.107 What enforcement actions apply to firms participating in the DBE program?

(a) If you are a firm that does not meet the eligibility criteria of subpart D of this part and that attempts to participate in a DOT-assisted program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(b) If you are a firm that, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility criteria of subpart D of this part, the Department may initiate suspension or debarment proceedings against you under 2 CFR parts 180 and 1200.

(c) In a suspension or debarment proceeding brought under paragraph (a) or (b) of this section, the concerned operating administration may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude the Department 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.

(d) The Department 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.

(e) The Department 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 DOT-assisted program or otherwise violates applicable Federal statutes.

[64 FR 5126, Feb. 2, 1999, as amended at 76 FR 5101, Jan. 28, 2011]

[⬆️ Back to Top](#)

\$26.109 What are the rules governing information, confidentiality, cooperation, and intimidation or retaliation?

(a) *Availability of records.* (1) In responding to requests for information concerning any aspect of the DBE program, the Department complies with provisions of the Federal Freedom of Information and Privacy Acts (5 U.S.C. 552 and 552a). The Department may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.

(2) Notwithstanding any provision of Federal or state law, you must not release any information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting information. However, you must transmit this information to DOT in any certification appeal proceeding under §26.89 of this part or to any other state to which the individual's firm has applied for certification under §26.85 of this part.

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

(c) *Cooperation.* All participants in the Department'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 DOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).

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

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35556, June 16, 2003; 76 FR 5101, Jan. 28, 2011]

[⬆️ Back to Top](#)

Appendix A to Part 26—Guidance Concerning Good Faith Efforts

I. When, as a recipient, you establish a contract goal on a DOT-assisted contract for procuring construction, equipment, services, or any other purpose, a bidder must, in order to be responsible and/or responsive, make sufficient good faith efforts to meet the goal. The bidder can meet this requirement in either of two ways. First, the bidder can meet the goal, documenting commitments for participation by DBE firms sufficient for this purpose. Second, even if it doesn't meet the goal, the bidder can document adequate good faith efforts. This means that the bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement of this part which, by their scope, intensity, and appropriateness to the objective, could reasonably be expected to obtain sufficient DBE participation, even if they were not fully successful.

II. In any situation in which you have established a contract goal, Part 26 requires you to use the good faith efforts mechanism of this part. As a recipient, you have the responsibility to make a fair and reasonable judgment whether a bidder that did not meet the goal made adequate good faith efforts. It is important for you to consider the quality, quantity, and intensity of the different kinds of efforts that the bidder has made, based on the regulations and the guidance in this Appendix.

The efforts employed by the bidder should be those that one could reasonably expect a bidder to take if the bidder were actively and aggressively trying to obtain DBE participation sufficient to meet the DBE contract goal. Mere pro forma efforts are not good faith efforts to meet the DBE contract requirements. We emphasize, however, that your determination concerning the sufficiency of the firm's good faith efforts is a judgment call. Determinations should not be made using quantitative formulas.

III. The Department also strongly cautions you against requiring that a bidder meet a contract goal (*i.e.*, obtain a specified amount of DBE participation) in order to be awarded a contract, even though the bidder makes an adequate good faith efforts showing. This rule specifically prohibits you from ignoring bona fide good faith efforts.

IV. The following is a list of types of actions which you should consider as part of the bidder's good faith efforts to obtain DBE participation. It is not intended to be a mandatory checklist, nor is it intended to be exclusive or exhaustive. Other factors or types of efforts may be relevant in appropriate cases.

A. (1) Conducting market research to identify small business contractors and suppliers and soliciting through all reasonable and available means the interest of all certified DBEs that have the capability to perform the work of the contract. This may include attendance at pre-bid and business matchmaking meetings and events, advertising and/or written notices, posting of Notices of Sources Sought and/or Requests for Proposals, written notices or emails to all DBEs listed in the State's directory of transportation firms that specialize in the areas of work desired (as noted in the DBE directory) and which are located in the area or surrounding areas of the project.

(2) The 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 subcontract. The bidder should determine with certainty if the DBEs are interested by taking appropriate steps to follow up initial solicitations.

B. Selecting portions of the work to be performed by DBEs in order to increase the likelihood that the DBE goals will be achieved. This includes, where appropriate, breaking out contract work items into economically feasible units (for example, smaller tasks or quantities) to facilitate DBE participation, even when the prime contractor might otherwise prefer to perform these work items with its own forces. This may include, where possible, establishing flexible timeframes for performance and delivery schedules in a manner that encourages and facilitates DBE participation.

C. Providing interested DBEs with adequate information about the plans, specifications, and requirements of the contract in a timely manner to assist them in responding to a solicitation with their offer for the subcontract.

D. (1) Negotiating in good faith with interested DBEs. It is the bidder's responsibility to make a portion of the work available to DBE subcontractors and suppliers and to select those portions of the work or material needs consistent with the available DBE subcontractors and suppliers, so as to facilitate DBE participation. Evidence of such negotiation includes the names, addresses, and telephone numbers of DBEs that were considered; a description of the information provided regarding the plans and specifications for the work selected for subcontracting; and evidence as to why additional Agreements could not be reached for DBEs to perform the work.

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

E. (1) Not rejecting DBEs as being unqualified without sound reasons based on a thorough investigation of their capabilities. The contractor's standing within its industry, membership in specific groups, organizations, or associations and political or social affiliations (for example union vs. non-union status) are not legitimate causes for the rejection or non-solicitation of bids in the contractor's efforts to meet the project goal. Another practice considered an insufficient good faith effort is the rejection of the DBE because its quotation for the work was not the lowest received. However, nothing in this paragraph shall be construed to require the bidder or prime contractor to accept unreasonable quotes in order to satisfy contract goals.

(2) A prime contractor's inability to find a replacement DBE at the original price is not alone sufficient to support a finding that good faith efforts have been made to replace the original DBE. The fact that the contractor has the ability and/or desire to perform the contract work with its own forces does not relieve the contractor of the obligation to make good faith efforts to find a replacement DBE, and it is not a sound basis for rejecting a prospective replacement DBE's reasonable quote.

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

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

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

V. In determining whether a bidder has made good faith efforts, it is essential to scrutinize its documented efforts. At a minimum, you must review the performance of other bidders in meeting the contract goal. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, you may view this, in conjunction with other factors, as evidence of the apparent successful bidder having made good faith efforts. As provided in §26.53(b) (2)(vi), you must also require the contractor to submit copies of each DBE and non-DBE subcontractor quote submitted to the bidder when a non-DBE subcontractor was selected over a DBE for work on the contract to review whether DBE prices were substantially higher; and contact the DBEs listed on a contractor's solicitation to inquire as to whether they were contacted by the prime. Pro forma mailings to DBEs requesting bids are not alone sufficient to satisfy good faith efforts under the rule.

VI. A promise to use DBEs after contract award is not considered to be responsive to the contract solicitation or to constitute good faith efforts.

[79 FR 59600, Oct. 2, 2014]

[Back to Top](#)

Appendix B to Part 26—Uniform Report of DBE Awards or Commitments and Payments Form

INSTRUCTIONS FOR COMPLETING THE UNIFORM REPORT OF DBE AWARDS/COMMITMENTS AND PAYMENTS

Recipients of Department of Transportation (DOT) funds are expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. Failure to submit contracting data relative to the DBE program will result in noncompliance with Part 26. All dollar values listed on this form should represent the DOT share attributable to the Operating Administration (OA): Federal Highway Administration (FHWA), Federal Aviation Administration (FAA) or Federal Transit Administration (FTA) to which this report will be submitted.

1. Indicate the DOT (OA) that provides your Federal financial assistance. If assistance comes from more than one OA, use separate reporting forms for each OA. If you are an FTA recipient, indicate your Vendor Number in the space provided.

2. If you are an FAA recipient, indicate the relevant AIP Numbers covered by this report. If you are an FTA recipient, indicate the Grant/Project numbers covered by this report. If more than ten attach a separate sheet.

3. Specify the Federal fiscal year (*i.e.*, October 1-September 30) in which the covered reporting period falls.

4. State the date of submission of this report.

5. Check the appropriate box that indicates the reporting period that the data provided in this report covers. For FHWA and FTA recipients, if this report is due June 1, data should cover October 1-March 31. If this report is due December 1, data should cover April 1-September 30. If the report is due to the FAA, data should cover the entire year.

6. Provide the name and address of the recipient.

7. State your overall DBE goal(s) established for the Federal fiscal year of the report being submitted to and approved by the relevant OA. Your overall goal is to be reported as well as the breakdown for specific Race Conscious and Race Neutral projections (both of which include gender-conscious/neutral projections). The Race Conscious projection should be based on measures that focus on and provide benefits only for DBEs. The use of contract goals is a primary example of a race conscious measure. The Race Neutral projection should include measures that, while benefiting DBEs, are not solely focused on DBE firms. For example, a small business outreach program, technical assistance, and prompt payment clauses can assist a wide variety of businesses in addition to helping DBE firms.

Section A: Awards and Commitments Made During This Period

The amounts in items 8(A)-10(I) should include all types of prime contracts awarded and all types of subcontracts awarded or committed, including: professional or consultant services, construction, purchase of materials or supplies, lease or purchase of equipment and any other types of services. All dollar amounts are to reflect only the Federal share of such contracts and should be rounded to the nearest dollar.

Line 8: Prime contracts awarded this period: The items on this line should correspond to the contracts directly between the recipient and a supply or service contractor, with no intermediaries between the two.

8(A). Provide the *total dollar amount* for all prime contracts assisted with DOT funds and awarded during this reporting period. This value should include the entire Federal share of the contracts without removing any amounts associated with resulting subcontracts.

8(B). Provide the *total number* of all prime contracts assisted with DOT funds and awarded during this reporting period.

8(C). From the total dollar amount awarded in item 8(A), provide the *dollar amount* awarded in prime contracts to certified DBE firms during this reporting period. This amount should not include the amounts sub contracted to other firms.

8(D). From the total number of prime contracts awarded in item 8(B), specify the *number* of prime contracts awarded to certified DBE firms during this reporting period.

8(E&F). This field is closed for data entry. Except for the very rare case of DBE-set asides permitted under 49 CFR part 26, all prime contracts awarded to DBEs are regarded as race-neutral.

8(G). From the total dollar amount awarded in item 8(C), provide the *dollar amount* awarded to certified DBEs through the use of Race Neutral methods. See the definition of Race Neutral in item 7 and the explanation in item 8 of project types to include.

8(H). From the total number of prime contracts awarded in 8(D), specify the *number* awarded to DBEs through Race Neutral methods.

8(I). Of all prime contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 8(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Line 9: Subcontracts awarded/committed this period: Items 9(A)-9(I) are derived in the same way as items 8(A)-8(I), except that these calculations should be based on subcontracts rather than prime contracts. Unlike prime contracts, which may only be awarded, subcontracts may be either awarded or committed.

9(A). If filling out the form for general reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded in prime contracts in 8(A), and therefore should never be greater than the amount awarded in prime contracts. If filling out the form for project reporting, provide the total dollar amount of subcontracts assisted with DOT funds awarded or committed during this period. This value should be a subset of the total dollars awarded or previously in prime contracts in 8(A). The sum of all subcontract amounts in consecutive periods should never exceed the sum of all prime contract amounts awarded in those periods.

9(B). Provide the total number of all sub contracts assisted with DOT funds that were awarded or committed during this reporting period.

9(C). From the total dollar amount of sub contracts awarded/committed this period in item 9(A), provide the total dollar amount awarded in sub contracts to DBEs.

9(D). From the total number of sub contracts awarded or committed in item 9(B), specify the number of sub contracts awarded or committed to DBEs.

9(E). From the total dollar amount of sub contracts awarded or committed to DBEs this period, provide the amount in dollars to DBEs using Race Conscious measures.

9(F). From the total number of sub contracts awarded or committed to DBEs this period, provide the number of sub contracts awarded or committed to DBEs using Race Conscious measures.

9(G). From the total dollar amount of sub contracts awarded/committed to DBEs this period, provide the amount in dollars to DBEs using Race Neutral measures.

9(H). From the total number of sub contracts awarded/committed to DBEs this period, provide the number of sub contracts awarded to DBEs using Race Neutral measures.

9(I). Of all subcontracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the dollar amount in item 9(C) by the dollar amount in item 9(A) to derive this percentage. Round percentage to the nearest tenth.

Line 10: Total contracts awarded or committed this period. These fields should be used to show the total dollar value and number of contracts awarded to DBEs and to calculate the overall percentage of dollars awarded to DBEs.

10(A)-10(B). These fields are unavailable for data entry.

10(C-H). Combine the total values listed on the prime contracts line (Line 8) with the corresponding values on the subcontracts line (Line 9).

10(I). Of all contracts awarded this reporting period, calculate the *percentage* going to DBEs. Divide the total dollars awarded to DBEs in item 10(C) by the dollar amount in item 8(A) to derive this percentage. Round percentage to the nearest tenth.

Section B: Breakdown by Ethnicity & Gender of Contracts Awarded to DBEs This Period

11-17. Further breakdown the contracting activity with DBE involvement. The Total Dollar Amount to DBEs in 17(C)

should equal the Total Dollar Amount to DBEs in 10(C). Likewise the total number of contracts to DBEs in 17(F) should equal the Total Number of Contracts to DBEs in 10(D).

Line 16: The “Non-Minority” category is reserved for any firms whose owners are not members of the presumptively disadvantaged groups already listed, but who are either “women” OR eligible for the DBE program on an individual basis. All DBE firms must be certified by the Unified Certification Program to be counted in this report.

Section C: Payments on Ongoing Contracts

Line 18(A-E). Submit information on contracts that are currently in progress. All dollar amounts are to reflect only the Federal share of such contracts, and should be rounded to the nearest dollar.

18(A). Provide the total dollar amount paid to all firms performing work on contracts.

18(B). Provide the total number of contracts where work was performed during the reporting period.

18(C). From the total number of contracts provided in 18(A) provide the total number of contracts that are currently being performed by DBE firms for which payments have been made.

18(D). From the total dollar amount paid to all firms in 18(A), provide the total dollar value paid to DBE firms currently performing work during this period.

18(E). Provide the total number of DBE firms that received payment during this reporting period. For example, while 3 contracts may be active during this period, one DBE firm may be providing supplies or services on all three contracts. This field should only list the number of DBE firms performing work.

18(F). Of all payments made during this period, calculate the percentage going to DBEs. Divide the total dollar value to DBEs in item 18(D) by the total dollars of all payments in 18(B). Round percentage to the nearest tenth.

Section D: Actual Payments on Contracts Completed This Reporting Period

This section should provide information only on contracts that are closed during this period. All dollar amounts are to reflect the entire Federal share of such contracts, and should be rounded to the nearest dollar.

19(A). Provide the total number of contracts completed during this reporting period that used Race Conscious measures. Race Conscious contracts are those with contract goals or another race conscious measure.

19(B). Provide the total dollar value of prime contracts completed this reporting period that had race conscious measures.

19(C). From the total dollar value of prime contracts completed this period in 19(B), provide the total dollar amount of dollars awarded or committed to DBE firms in order to meet the contract goals. This applies only to Race Conscious contracts.

19(D). Provide the actual total DBE participation in dollars on the race conscious contracts completed this reporting period.

19(E). Of all the contracts completed this reporting period using Race Conscious measures, calculate the percentage of DBE participation. Divide the total dollar amount to DBEs in item 19(D) by the total dollar value provided in 19(B) to derive this percentage. Round to the nearest tenth.

20(A)-20(E). Items 21(A)-21(E) are derived in the same manner as items 19(A)-19(E), except these figures should be based on contracts completed using Race Neutral measures.

20(C). This field is closed.

21(A)-21(D). Calculate the totals for each column by adding the race conscious and neutral figures provided in each row above.

21(C). This field is closed.

21(E). Calculate the overall percentage of dollars to DBEs on completed contracts. Divide the Total DBE participation dollar value in 21(D) by the Total Dollar Value of Contracts Completed in 21(B) to derive this percentage. Round to the nearest tenth.

23. Name of the Authorized Representative preparing this form.

24. Signature of the Authorized Representative.

25. Phone number of the Authorized Representative.

****Submit your completed report to your Regional or Division Office.**

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[79 FR 59601, Oct. 2, 2014]

[Back to Top](#)

Appendix C to Part 26—DBE Business Development Program Guidelines

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

(A) Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages; a developmental stage and a transitional stage.

(B) In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.

(C) By no later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.

(D) The business plan should contain at least the following:

- (1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.
- (2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.
- (3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;
- (4) Estimates of contract awards from the DBE program and from other sources which are needed to meet the objectives and goals for the years covered by the business plan; and
- (5) Such other information as the recipient may require.

(E) Each participant should annually review its currently approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The currently approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.

(F) Each participant should annually forecast in writing its need for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:

- (1) The aggregate dollar value of contracts to be sought under the DBE program, reflecting compliance with the business plan;
- (2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;
- (3) The types of contract opportunities being sought, based on the firm's primary line of business; and
- (4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.

(G) Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.

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

the number of contracts, aggregate amount of the contract received, years in business, growth potential, etc.

(I) Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transition management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.

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

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

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

(L) Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.

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

[⬆ Back to Top](#)

Appendix D to Part 26—Mentor-Protégé Program Guidelines

(A) The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

(B)(1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangement and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may set a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursable under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor's services provided and associated costs must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

(C) DBEs involved in a mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/ subcontractor mentor-protégé agreement.

[⬆ Back to Top](#)

Appendix E to Part 26—Individual Determinations of Social and Economic Disadvantage

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

SOCIAL DISADVANTAGE

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

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will

consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

ECONOMIC DISADVANTAGE

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.* (1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.* (1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.


(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).

[64 FR 5126, Feb. 2, 1999, as amended at 68 FR 35559, June 16, 2003]

[⬆️ Back to Top](#)

Appendix F to Part 26—Uniform Certification Application Form



Appendix F

UNIFORM CERTIFICATION APPLICATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE) /
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
49 C.F.R. Parts 23 and 26

Readmap for Applicants

1. Should I apply?

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard (g) does not exceed \$23.09 million in gross annual receipts for DBE (352.17 million for ACDBE). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and renewable leaders.)

2. How do I apply?

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document should help you locate the firms you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

3. Where can I send my application? **INSERT UCP PARTICIPATING MEMBER CONTACT INFORMATION**

4. Who will contact me about my application and what are the eligibility standards?

The DBE and ACDBE Programs require that all U.S. Department of Transportation (DOT) recipients of federal assistance participate in a statewide Unified Certification Program (UCP). The UCP is a one-stop certification program that eliminates the need for your firms to obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs for DOT purposes, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

5. Where can I find more information?


U.S. DOT—<https://www.dti.dhs.gov> (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information.)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS): <http://www.sba.gov/content/table-small-business-size-standards>.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Privacy Act of 1974 (5 U.S.C. 552) and (25 U.S.C. 3243). The Privacy Act provides comprehensive protection for your personal information. This includes how information is collected, used, disclosed, stored, and destroyed. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 CFR 23.3 and the Airport Concessions Disadvantaged Business Enterprise Program as defined in 49 CFR 26.1.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 75917).

Under 49 C.F.R. 23.107, dated February 1, 2009 and January 26, 2011, if at any time the Department as a recipient has cause to believe that any person or firm has willfully and knowingly provided incorrect information as well false information, the Department may initiate suspension or debarment proceedings against the person or firm under 49 CFR Parts 109 and 120. Suspension, debarment, and Department rule enforcement actions under 49 C.F.R. Part 13, Program Fraud and Civil Remedies, apply the same to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements to Federal agencies.

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INSTRUCTIONS FOR COMPLETING THE
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
UNIFORM CERTIFICATION APPLICATION

NOTE: All participating firms must be for-profit enterprises. If your firm is not for-profit, then you do NOT qualify for the DBE/ACDBE program and should not complete this application. If you require additional space for any question in this application, please attach additional sheets or pages as needed, using care to indicate on each attached sheet(s) the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

(1) Enter the contact name and title of the person completing this application and the person who will serve as your firm's contact for this application.

(2) Enter the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.

(3) Enter the primary phone number of your firm.

(4) Enter a secondary phone number, if any.

(5) Enter your firm's fax number, if any.

(6) Enter the contact person's email address.

(7) Enter your firm's website address, if any.

(8) Enter the street address of the firm where its offices are physically located (not a P.O. Box).

(9) Enter the mailing address of your firm, if it is different from your firm's street address.

(2) If you know the appropriate NAICS Code for the line(s) of work you identified in your business profile, enter the code in the space provided.

(3) Enter the date on which your firm was established as stated in your firm's Articles of Incorporation or charter.

(4) Enter the date each person became a firm owner.

(5) Check the appropriate box describing the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.

(6) Check the appropriate box that indicates whether your firm is "for-profit." If you checked "No," then you do NOT qualify for the DBE/ACDBE program and should not complete this application. All participating firms must be for-profit enterprises. If the firm is a for-profit enterprise, provide the Federal Tax ID number as stated in your firm's federal tax return.

(7) Check the appropriate box that describes the type of legal incorporation of your firm, as indicated in your firm's Articles of Incorporation or similar document. Identify all joint venture periods, if applicable. If you checked "Other," briefly explain in the space provided.

(8) Indicate in the space provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.

(9) Specify the firm's gross receipts for each of the past three years, as stated in your firm's filed Federal tax returns. You must provide these firm's gross receipts and attach complete copies of these firm's Federal tax returns. Attribution is defined in 49 C.F.R. 23.85 and 13 C.F.R. Part 121.

B. Prior Other Certifications and Applications

(1) Check the appropriate box indicating whether your firm is currently certified in the DBE/ACDBE program, and provide the name of the certifying agency, and provide the date of the certification.

(2) Indicate whether your firm or any of the persons listed has been previously certified as a DBE, SBA, or Small Disadvantaged Business (SDB) firm, or state and local SDB/DBE firm. Indicate if the firm has ever been debarred from one of these programs. Indicate the program, suspension or debarment had in holding previous status as certified by any state or local agency, or Federal entity. If your answer is yes, indicate the name of the agency, and explain fully the nature of the action in the space provided. Indicate if you have ever appealed that decision to the Department and if so, attach a copy of USDOOT's final agency decision(s).

Section 2: GENERAL INFORMATION

A. Business profile

(1) Give a concise description of the firm's primary activity, the product(s) or service the company provides, or type of construction. If your company offers more than one product/service, list primary product or service first (attach additional sheets if necessary). This description may be used to use UCP online directory if you are certified as a DBE.

B. Relationship and Dealings with Other Businesses

(1) Check the appropriate box that indicates whether your firm is involved in any of the business practices, or whether your firm shares a telephone number(s), a point of sale, any office space, a mail, warehouse, other facilities, any equipment, financing, or any other staff member employees with any other business, organization or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and fully explain the nature of your relationship with these other business by identifying the business or person with whom you have any formal, informal, written, or

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Page 85

38 of 47

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red agreement. Provide an explanation of any items shared with other firms in the space provided.

(2) Check the appropriate box that indicates whether any other firm currently has or had an ownership interest in your firm at present or at any time in the past. If you checked **“No,”** please explain.

(3) Check the appropriate box that indicates whether at present or at any time in the past your firm:

(a) ever existed under different ownership, a different type of ownership, or a different name;

(b) existed as a subsidiary of any other firm;

(c) existed as a partnership in which one or more of the partners are now other firms;

(d) owned any percentage of any other firm; and

(e) had any collaboration of its own.

(f) served as a subcontractor with another firm constituting more than 25% of your firm's receipts.

If you answered **“Yes”** to any of the questions in (2)-(f), you may be asked to explain. Be unambiguous in detail.

Section 6: MAJORITY OWNER INFORMATION

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below. (If your firm has more than one owner, provide completed copies of this section for each owner.)

A. Identify the majority owner of the firm holding 51% or more ownership interest.

(1) Enter the full name of the owner.

(2) Have his/her title or position within your firm.

(3) Give his/her home phone number.

(4) Have his/her home faxed address.

(5) Indicate the owner's gender.

(6) Check the appropriate box to indicate whether the owner is a U.S. citizen or a federally admitted permanent resident of the U.S. If your firm owner is **NOT** eligible for certification as a DBE owner.

(7) Enter the number of years during which this owner has been an owner of your firm.

(8) Indicate the percentage of the total ownership this person holds and the firm acquired, including (if appropriate, the date of each round).

(9) Indicate the dollar value of this owner's initial investment in your firm, broken down by cash, real estate, equipment, and/or other resources. Describe how you acquired your business and attach documentation substantiating this investment.

B. Additional Owner Information

(1) Describe the familial relationship of this owner to each other owner of your firm and employee.

(2) Indicate whether this owner performs a management or supervisory function for any other business. If you

checked **“Yes,”** state the name of the other business and the owner's function title held in that business.

(3) (a) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked **“Yes,”** identify the name of the other business, the nature of the business relationship, and the owner's function in the firm.

(b) If the owner works for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week, please identify this activity.

(4) Provide the person's net worth of the owner applying for certification in the space provided. Complete and attach the accompanying “Personal Net Worth Statement” the DBE/ACDBE Program Eligibility with your application. Note: complete this section and accompanying statement only for each owner applying for DBE certification (i.e., for each owner claiming to be socially and economically disadvantaged).

(5) Check the appropriate box that indicates whether any two has been entered for the benefit of the disadvantaged owner(s). If you answered **“Yes,”** you may be asked to provide a copy of the trust instrument.

(6) Check the appropriate to indicate whether any of your immediate family members, managers, or employees, own, manage, or are associated with another company business family member is defined as 49 C.F.R. 125.1. If you answered **“Yes,”** provide the name of the company, the type of business, and whether they own or manage the company.

Section 7: CONTROL

A. Identify the firm's Officers and Board of Directors

(1) In the space provided, list the name, title, date of appointment, ethnicity, and gender of each officer.

(2) In the space provided, list the name, title, date of appointment, ethnicity, and gender of each individual or legal person listed as Director.

(3) Check the appropriate box to indicate whether any of your firm's officers and/or directors listed above performs a management or supervisory function for any other business. If you answered **“Yes,”** identify each person by name, his/her title, the name of the company, the type of business, and whether they perform a management or supervisory function in that other business.

(4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above performs a management or supervisory function for any other business. If you answered **“Yes,”** identify each person by name, his/her title, the name of the company, the type of business, and whether they perform a management or supervisory function in that other business.

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B. Duties of Owners, Officers, Directors, Managers and Key Personnel

(1), (2) Specify the rules of the majority and minority owners, directors, officers, and managers, and key personnel who control the functions listed for the business. Submit a return for each owner and one owner identified below. State the name of the individual, title, race and gender and percentage ownership of firm. Circle the frequency of each person's involvement as follows: “Always, frequently, seldom, or never” in each case.

Indicate whether any of the persons listed in this section performs a management or supervisory function for any other business. Identify the person, business, and their title/function. Identify if any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investments, equipment, loans, personal sharing, etc.) If you answered **“Yes,”** describe the nature of his/her business relationship with that other firm.

C. Inventory Indicate firm inventory in these categories:

(1) **Equipment and Vehicles**
State the make and model, and current dollar value of each piece of equipment and motor vehicle held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm or owner. Clarify if it is used as collateral, and when this item is stored.

(2) **Office Space**
State the street address of each office space held and/or used by your firm. Indicate whether your firm or owner owns or leases the office space and the current dollar value of that property or its lease.

(3) **Storage Space**
State the street address of each storage space held and/or used by your firm. Indicate whether your firm or owner owns or leases the storage space and the current dollar value of that property or its lease. Provide a signed lease agreement for each property.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered **“Yes,”** you may be asked to explain the nature of that reliance and the extent to which the other firm controls our work functions.

E. Financials: Bonding Information

Bonding Information: State the name, City and State of your firm's bank to the space provided. Identify the person able to sign checks in this account. Provide bank authorization and signature card.

Bonding Information: State your firm's bonding limits (in dollars), specifying both the aggregate and project limits.

F. Sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms guaranteeing the loan.

State the name and address of each source, the name of person receiving the loan, original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm. Provide copies of signed loan agreements and security agreements.

G. Contributions or transfers of assets to from your firm and whether any of its owners or member individuals over the past two years:

Indicate in the space provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from which it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. Current Income/earnings held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and listing State of the license or permit. Attach copies of licenses, license renewal forms, permits, and local industry forms.

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

List the name of each owner or contractor for each contract, the name and location of the project under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. Largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AIRPORT CONSENSUS AGREEMENT APPLICANTS

Identify the consensus space, address and location of the airport, the value of the property to be sold, and the business purpose and for the airport. Provide information concerning any other airport consensus agreements, the airport firm or any other airport owner or operator, including name, location, type of consensus, and start date of the consensus.

AFFIDAVIT & SIGNATURE

The Affidavit of Consensus must accompany your application for certification. Carefully read the attached affidavit in its entirety. Fill in the requested information for each bank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

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Section 3: MAJORITY OWNER INFORMATION			
A. Identify the majority owner of the firm holding 51% or more ownership interest.			
(1) Full Name:	(2) Title:	(3) Home Phone #:	
(4) Home Address (Street and Number):	City:	State:	Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(8) Number of years as owner:		
(6) Ethnic group membership (Check all that apply):	(9) Percentage owned: %		
<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Native American <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (specify):	Class of stock owned: _____ Date acquired: _____		
(7) U.S. Citizenship: <input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Lawfully Admitted Permanent Resident	(10) Initial investment to acquire ownership interest in firm:		
	Type: _____ Dollar Value: _____ Cash: \$ _____ Real Estate: \$ _____ Equipment: \$ _____ Other: \$ _____		
	Describe how you acquired your business: <input type="checkbox"/> Started business myself <input type="checkbox"/> It was a gift from: _____ <input type="checkbox"/> I bought it from: _____ <input type="checkbox"/> I inherited it from: _____ <input type="checkbox"/> Other: _____ (Attach documentation substantiating your investment)		
B. Additional Owner Information			
(1) Describe familial relationship to other owners and employees:			
(2) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of business: _____ Position Title: _____			
(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial transactions, equipment loans, personal sharing, etc.) <input type="checkbox"/> Yes <input type="checkbox"/> No Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:			
(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____			
(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? \$ _____			
(b) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, you may be asked to provide a copy of the trust instrument)			
(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage the company. (Please attach extra sheets, if needed): _____			
U.S. DOT Uniform DBE/ACDBE Certification Application • Page 7 of 14			

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Section 3: OWNER INFORMATION, Cont'd.			
A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in the firm (Attach separate sheets for each additional owner)			
(1) Full Name:	(2) Title:	(3) Home Phone #:	
(4) Home Address (Street and Number):	City:	State:	Zip:
(5) Gender: <input type="checkbox"/> Male <input type="checkbox"/> Female	(8) Number of years as owner:		
(6) Ethnic group membership (Check all that apply):	(9) Percentage owned: %		
<input type="checkbox"/> Black <input type="checkbox"/> Hispanic <input type="checkbox"/> Asian Pacific <input type="checkbox"/> Native American <input type="checkbox"/> Subcontinent Asian <input type="checkbox"/> Other (specify):	Class of stock owned: _____ Date acquired: _____		
(7) U.S. Citizenship: <input type="checkbox"/> U.S. Citizen <input type="checkbox"/> Lawfully Admitted Permanent Resident	(10) Initial investment to acquire ownership interest in firm:		
	Type: _____ Dollar Value: _____ Cash: \$ _____ Real Estate: \$ _____ Equipment: \$ _____ Other: \$ _____		
	Describe how you acquired your business: <input type="checkbox"/> Started business myself <input type="checkbox"/> It was a gift from: _____ <input type="checkbox"/> I bought it from: _____ <input type="checkbox"/> I inherited it from: _____ <input type="checkbox"/> Other: _____ (Attach documentation substantiating your investment)		
B. Additional Owner Information			
(1) Describe familial relationship to other owners and employees:			
(2) Does this owner perform a management or supervisory function for any other business? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, identify: Name of business: _____ Position Title: _____			
(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial transactions, equipment loans, personal sharing, etc.) <input type="checkbox"/> Yes <input type="checkbox"/> No Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:			
(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____			
(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? \$ _____			
(b) Has any trust been created for the benefit of this disadvantaged owner(s)? <input type="checkbox"/> Yes <input type="checkbox"/> No (If Yes, you may be asked to provide a copy of the trust instrument)			
(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? <input type="checkbox"/> Yes <input type="checkbox"/> No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage. (Please attach extra sheets, if needed): _____			
U.S. DOT Uniform DBE/ACDBE Certification Application • Page 8 of 14			

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Section 4: CONTROL

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

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

(3) Do any of the persons listed above perform a management or supervisory function for any other business?
☐ Yes ☐ No If Yes, identify for each:

Person: _____ Title: _____
Business: _____ Function: _____

Person: _____ Title: _____
Business: _____ Function: _____

(4) Do any of the persons listed in section A above own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, loans, personal sharing, etc.)
☐ Yes ☐ No If Yes, identify for each:

Firm Name: _____ Person: _____
Nature of Business Relationship: _____

B. Duties of Owners, Officers, Directors, Managers, and Key Personnel
I. Identify your firm's management personnel who control your firm in the following areas (attach separate sheets as needed):

A = Always F = Frequently S = Seldom N = Never	Majority Owner (51% or more)				Minority Owner (49% or less)			
	Name	Title	Percent Owned		Name	Title	Percent Owned	
Set policy for company direction/scope of operations	A	F	S	N	A	F	S	N
Bidding and estimating	A	F	S	N	A	F	S	N
Major purchasing decisions	A	F	S	N	A	F	S	N
Marketing and sales	A	F	S	N	A	F	S	N
Supervisory field operations	A	F	S	N	A	F	S	N
Attend bid opening and hearings	A	F	S	N	A	F	S	N
Perform office management (billing, accounts receivable/payable, etc.)	A	F	S	N	A	F	S	N
Hire and fire management staff	A	F	S	N	A	F	S	N
Hire and fire field staff or crew	A	F	S	N	A	F	S	N
Designate profits spending or no investment	A	F	S	N	A	F	S	N
Obligate business by contract/credit	A	F	S	N	A	F	S	N
Purchase equipment	A	F	S	N	A	F	S	N
Sign business checks	A	F	S	N	A	F	S	N

U.S. DOT Uniform DBE/ACDBE Certification Application • Page 9 of 14

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2. Complete for all Officers, Directors, Managers, and Key Personnel who control the following functions for the firm. (Attach separate sheets as needed):

A = Always F = Frequently S = Seldom N = Never	Officer/Director/Manager/Key Personnel				Officer/Director/Manager/Key Personnel			
	Name	Title	Race and Gender	Percent Owned	Name	Title	Race and Gender	Percent Owned
Set policy for company direction/scope of operations	A	F	S	N	A	F	S	N
Bidding and estimating	A	F	S	N	A	F	S	N
Major purchasing decisions	A	F	S	N	A	F	S	N
Marketing and sales	A	F	S	N	A	F	S	N
Supervisory field operations	A	F	S	N	A	F	S	N
Attend bid opening and hearings	A	F	S	N	A	F	S	N
Perform office management (billing, accounts receivable/payable, etc.)	A	F	S	N	A	F	S	N
Hire and fire management staff	A	F	S	N	A	F	S	N
Hire and fire field staff or crew	A	F	S	N	A	F	S	N
Designate profits spending or no investment	A	F	S	N	A	F	S	N
Obligate business by contract/credit	A	F	S	N	A	F	S	N
Purchase equipment	A	F	S	N	A	F	S	N
Sign business checks	A	F	S	N	A	F	S	N

Do any of the persons listed in B1 or B2 perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function:

Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, loans, personal sharing, etc.) If Yes, describe the nature of the business relationship:

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

1. Equipment and Vehicles

Make and Model	Current Value	Owned or Leased by Firm or Owner?	Used as collateral?	Where is item stored?
1.				
2.				
3.				
4.				
5.				
6.				
7.				
8.				
9.				

2. Office Space

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease

U.S. DOT Uniform DBE/ACDBE Certification Application • Page 10 of 14

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Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease			
D. Does your firm rely on any other firm for management functions or employee payroll? <input type="checkbox"/> Yes <input type="checkbox"/> No					
E. Financial Banking Information (Provide bank authorization and signature cards)					
Name of bank: _____ City and State: _____					
The following individuals are able to sign checks on this account: _____					
Name of bank: _____ City and State: _____					
The following individuals are able to sign checks on this account: _____					
Bonding Information: If you have bonding capacity, identify the firm's bonding aggregate and project limits: Aggregate limit \$ _____ Project limit \$ _____					
F. Identify all sources, amounts, and purposes of money loaned to your firm including from financial institutions. Identify whether you the owner and any other person or firm loaned money to the applicant DBE/ACDBE. Include the names of any persons or firms guaranteeing the loan, if other than the listed owner. (Provide copies of signed loan agreements and security agreements.)					
Name of Source	Address of Source	Name of Person Guaranteeing the Loan	Original Amount	Current Balance	Purpose of Loan
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
G. List all contributions or transfers of assets to your firm and to/from any of its owners or another individual over the past two years (attach additional sheets if needed).					
Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1.	_____	_____	_____	_____	_____
2.	_____	_____	_____	_____	_____
3.	_____	_____	_____	_____	_____
H. List current licenses/permits held by any owner and/or employee of your firm (e.g. contractor, engineer, architect, etc.) (attach additional sheets if needed).					
Name of License/Permit Holder	Type of License/Permit	Expiration Date	State		
1.	_____	_____	_____		
2.	_____	_____	_____		
3.	_____	_____	_____		

U.S. DOT Uniform DBE/ACDBE Certification Application • Page 11 of 14

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

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

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

AIRPORT CONCESSION (ACDBE) APPLICANTS ONLY MUST COMPLETE THIS SECTION

Identify the following information concerning the ACDBE applicant firm:

Concession Name	Address / Location of Airport	Value of Property or Lease	Every Lease Payments Paid to the Airport

Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession:

Name of Concession	Location	Type of Concession	Start Date of Concession

U.S. DOT Uniform DBE/ACDBE Certification Application • Page 12 of 14

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AFFIDAVIT OF CERTIFICATION

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

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

I, _____ (fill name printed),
owner or officer under penalty of law that I am _____
(title of the applicant firm) _____, and that I
have read and understood all of the questions in this
application and that all of the foregoing information and
statements submitted in this application and its attachments
and supporting documents are true and correct to the best of
my knowledge, and that all responses to the questions are full
and complete, containing no material information. This response
includes all material information necessary to fully and
accurately identify and explain the questions, capabilities and
past performance history of the named firm as well as the ownership,
control, and affiliation thereof.

I recognize that the information submitted in this application is
for the purpose of seeking certification approved by a
government agency. I understand that a government agency
may, by statute or de facto agreement, determine the accuracy
and truth of the statements in the application, and I authorize
such agency to contact any entity named in the application, and
the named firm's bonding companies, banking institutions,
credit agencies, contractors, clients, and other consulting
agencies for the purpose of verifying the information supplied
and determining the named firm's eligibility.

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

If awarded a contract, subcontract, concession lease or
sublease, I agree to promptly and directly provide the prime
contractor, if any, and the Department, recipient agency, or
federal funding agency with no ongoing basis, current, complete
and accurate information regarding (1) work performed on the
project; (2) payments; and (3) proposed changes, if any, to the
foregoing arrangements.

I agree to provide written notice to the recipient agency or
Unified Certification Program of any material change in the
information contained in the original application within 30
calendar days of such change (e.g., ownership changes,
address/telephone number, personal net worth exceeding \$1.32
million, etc.).

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

I certify that I am a socially and economically disadvantaged
individual who is an owner of the above-referenced firm seeking
certification as a Disadvantaged Business Enterprise or Airport
Concession Disadvantaged Business Enterprise. In support of my
application, I certify that I am a member of one or more of the
following groups, and that I have held myself out as a member of
the group(s). (Check all that apply):

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

I certify that I am socially disadvantaged because I have been
subjected to racial or ethnic prejudice or cultural bias, or have
suffered the effects of discrimination, because of my identity
as a member of one or more of the groups identified above,
without regard to my individual qualities.

I further certify that my personal net worth does not exceed
\$1.32 million, and that I am economically disadvantaged
because my ability to compete in the free enterprise system has
been impaired due to diminished capital and credit
opportunities as compared to others in the same or similar line
of business who are not socially and economically
disadvantaged.

I declare under penalty of perjury that the information
provided in this application and supporting documents is true
and correct.

Signature _____ (DBE/ACDBE Applicant) (DBE)

NOTARY CERTIFICATE

U.S. DOT Unified DBE/ACDBE Certification Application • Page 13 of 14

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**UNIFORM CERTIFICATION APPLICATION
SUPPORTING DOCUMENTS CHECKLIST**

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following REQUIRED documents. A failure to supply any information requested by the UCP may result in your firm being denied DBE/ACDBE certification.

Required Documents for all Applicants:

- ☐ Resumes (that include places of employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
- ☐ Personal Net Worth Statement for each socially and economically disadvantaged owner comprising 5% or more of the ownership percentage of the applicant firm
- ☐ Personal Federal tax returns for the past 3 years, if applicable, for each disadvantaged owner
- ☐ Federal tax returns (and requests for extensions) filed by the firm and its affiliates with related schedules, for the past 3 years
- ☐ Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- ☐ Signed form and security agreements, and bonding forms
- ☐ List of equipment and/or vehicles owned and leased including VIN numbers, copy of title, proof of ownership, insurance cards for each vehicle
- ☐ Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm
- ☐ License, license interest of firm, permits, and local safety forms
- ☐ Descriptions of all real estate (including office/warehouse space, etc.) owned/leased by your firm and documented proof of ownership/signed lease
- ☐ Documented proof of any transfers of assets to/from your firm and to/from any of its owners over the past 2 years
- ☐ DBE/ACDBE and MBE/NAE/VEB/8(a)(2)(B)/WBE certifications, denials, and/or disqualifications, if applicable; and any U.S. DOT appeal decisions on these actions
- ☐ Bank authorization and regulatory cards
- ☐ Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ List of all employees, job titles, and dates of employment
- ☐ Proof of warehouse/storage facility ownership or lease arrangements

Partnership or Joint Venture:

- ☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC:

- ☐ Official Articles of Incorporation (signed by the state official)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement(s)
- ☐ Minutes of all stockholders and board of directors meetings

Optional Documents to Be Provided as Request:

- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolutions and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

The UCP to which you are applying may require the submission of the following documents. If requested to provide these documents, you must supply them with your application or at the on-site visit:

- ☐ Proof of citizenship
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Audited financial statements (if available)
- ☐ Personal Federal Tax returns for the past 3 years, if applicable, for other disadvantaged owners of the firm
- ☐ Trust agreements held by any owner claiming disadvantaged status
- ☐ Year-end balance sheets and income statements for the past 3 years (or life of firm, if less than three years)

Supplies:

- ☐ List of product lines owned and list of distribution equipment owned and/or leased


U.S. DOT Unified DBE/ACDBE Certification Application • Page 14 of 14

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[79 FR 59603, Oct. 2, 2014]

[Back to Top](#)

Appendix G to Part 26—Personal Net Worth Statement



U.S. Department of
Transportation

Personal Net Worth Statement
For DBE/ACDBE Program Eligibility

OMB APPROVAL NO.
EXPENSION DATE

As of _____

The form is used by all participants in the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Programs. Each individual owner of a firm applying to participate as a DBE or ACDBE, whose ownership and control are relied upon for DBE certification must complete this form. Each person signing this form authorizes the United Certification Program (UCP) to conduct random audits or reviews to verify the accuracy of the statements made. The agency you apply to will use the information provided to determine whether an owner is economically disadvantaged as defined in the DBE program regulations at 49 CFR Parts 23 and 26. Return form to appropriate DOT-certifying member, not U.S. DOT.

Name		Business Phone	
Residence Address (As reported to the IRS) City, State and Zip Code		Business Phone	
Business Name of Applicant Firm			
Spouse's Full Name (Married Status: Single, Married, Divorced, Unwed)			
ASSETS (List Cash)		LIABILITIES (List Cash)	
Cash and Cash Equivalents	\$	Loan on Life Insurance (Complete Section 5)	\$
Refinance Accounts (RRAs, 401(k), 403(b), Pension, etc.) (Report full value minus tax and interest penalties that would apply if assets were distributed today) (Complete Section 3)	\$	Mortgages on Real Estate Excluding Primary Residence Debt (Complete Section 4)	\$
Brokerage, Investment Accounts	\$	Notes, Obligations on Personal Property (Complete Section 6)	\$
Assets Held in Trust	\$	Notes & Accounts Payable to Banks and Others (Complete Section 2)	\$
Loans to Shareholders & Other Relationships (Complete Section 2)	\$	Other Liabilities (Complete Section 6)	\$
Real Estate Excluding Primary Residence (Complete Section 4)	\$	Unpaid Taxes (Complete Section 6)	\$
Life Insurance (Cash Surrender Value Only) (Complete Section 5)	\$		
Other Personal Property and Assets (Complete Section 6)	\$		
Business Interests Other Than the Applicant Firm (Complete Section 7)	\$		
Total Assets	\$	Total Liabilities	\$
		NET WORTH	

Section 2: Notes Payable to Banks and Others				
Name of Institution	Original Balance	Current Balance	Payment Amount	Frequency (Monthly, etc.)

U.S. DOT Personal Net Worth Statement for DBE/ACDBE Program Eligibility • Page 1 of 5

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Section 3: Brokerage and custodial accounts, stocks, bonds, retirement accounts. (Full Value) (See attachments if necessary)				
Name of Security / Brokerage Account / Retirement Account	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value
Section 4: Real Estate Owned (including Primary Residence, Investment Properties, Personal Property Leased or Rented for Business Purposes, Farm Properties, or any Other Income Producing property.) (List each parcel separately. Add additional sheets if necessary)				
Type of Property	Primary Residence	Property B	Property C	
Address				
Date Acquired and Method of Acquisition (purchase, inherit, divorce, gift, etc.)				
Names on Deed				
Purchase Price				
Present Market Value				
Source of Market Valuation				
Name of all Mortgage Holders				
Mortgage Acct. # and Balance (as of date of form)				
Equity line of credit balance				
Amount of Payment Due Monthly (Specify)				
Section 5: Life Insurance Held (Give face amount and cash surrender value of policies, name of insurance company and beneficiaries)				
Insurance Company	Face Value	Cash Surrender Amount	Beneficiaries	Loan on Policy Information

U.S. DOT Personal Net Worth Statement for DBE/ACDBE Program Eligibility • Page 2 of 5

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hold an ownership interest in, such as sole proprietorships, partnerships, joint ventures, corporations, or limited liability companies (other than the applicant firm). Do not reduce the value of these entities by any loans from the outside firm to the DBE/ACDBE applicant business.

Liabilities

Mortgages on Real Estate: Enter the total balance on all mortgages payable or real estate on page 1.

Loans on Life Insurance: Enter the total value of all loans due on life insurance policies on page 1, and complete section 5 on page 2.

Notes & Accounts Payable to Bank and Others: On page 1, section 2, enter details concerning any liability, including name of lender/creditor, original and current balances, payment terms, and security/collateral information. The entries should include automobile installment accounts. This should not, however, include any mortgage balances in this information is captured in section 4. Do not include loans for your business or mortgage for your properties in this section. You may be asked to submit copy of note security agreement, and the most recent account statement.

Other Liabilities: On page 1, enter the total value due on all other liabilities not listed in the previous section. In section 4, page 3, report the name of the individual obligated, names of co-signers, descriptions of the liability, the name of the entity owed, the date of the obligation, payment amounts and terms. Note: Do not include contingent liabilities in this section. Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you

have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do not count toward your net worth until they become actual liabilities.

Unpaid Taxes: Enter the total amount of all taxes that are currently due, but are unpaid on page 1, and complete section 6 on page 3. Contingent tax liabilities or anticipated taxes for current year should not be included. Describe in detail the name of the individual obligated, names of co-signers, the type of unpaid tax, to whom the tax is payable, due date, amount, and to what property, if any, the tax lien attaches. If none, state "NONE." You must include documentation, such as tax bills, to support the amounts.

Transfers of Assets:

Transfers of Assets: If you checked the box indicating yes on page 3 in this category, provide details on all asset transfers (within 2 years of the date of this personal net worth statement) to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust. Include a description of the asset, names of individuals on the deed, title, note or other instrument indicating ownership rights, the names of individuals receiving the asset and their relation to the transferor, the date of the transfer, and the value or consideration received. Submit documentation requested on the form related to the transfer.

Attache

Be sure to sign and date the statement. The Personal Net Worth Statement must be witnessed.

U.S. DOT Personal Net Worth Statement for DBE/ACDBE Program Eligibility • Page 5 of 5

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[79 FR 59617, Oct. 2, 2014]

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PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: AIRPORT COMMISSION -- AIR Dept. Code: AIRType of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)Type of Approval: ☐ Expedited ☒ Regular (☐ Omit Posting)Type of Service: Disadvantaged Business Enterprise (DBE) & Airport Concession DBE Consulting ServicesFunding Source: Airport Operating Funds PSC Duration: 4 years 30 weeksPSC Amount: \$300,000 PSC Est. Start Date: 12/01/2016 PSC Est. End Date: 06/30/2021**1. Description of Work****A. Scope of Work:**

Contractor will provide consulting services for the San Francisco International Airport (SFO) Disadvantaged Business Enterprise (DBE) and Airport Concessions Disadvantaged Business Enterprise (ACDBE) programs in compliance with Code of Federal Regulations (CFR) Title 49, Part 23 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr23_main_02.tpl) and 26 (http://www.ecfr.gov/cgi-bin/text-idx?tpl=/ecfrbrowse/Title49/49cfr26_main_02.tpl), both attached to this request. Contractor will provide ACDBE certification and consulting services including: 1) ACDBE certification, 2) DBE/ACDBE reporting, 3) DBE/ACDBE goal setting, 4) DBE/ACDBE compliance monitoring.

B. Explain why this service is necessary and the consequence of denial:

Per the CFR regulations listed above, SFO is required to operate and report on DBE and ACDBE programs, both of which align with the City's mission to ensure economic opportunities for disadvantaged businesses. The Federal Aviation Administration (FAA) and the Department of Transportation (DOT) Office of the Inspector General (OIG) have suggested improvements to these programs at SFO. If denied, SFO would be unable to fully develop and monitor the program and risk non-compliance with federal regulations.

C. Has this service been provided in the past. If so, how? If the service was provided via a PSC, provide the most recently approved PSC # and upload a copy of the PSC.
This is a new service.

D. Will the contract(s) be renewed? Yes, if there continues to be a need at SFO.

2. Union Notification: On 09/26/2016, the Department notified the following employee organizations of this PSC/RFP request: Architect & Engineers, Local 21

FOR DEPARTMENT OF HUMAN RESOURCES USEPSC# 49010 - 16/17

DHR Analysis/Recommendation:

11/21/2016

Commission Approval Required

Approved by Civil Service Commission

DHR Approved for 11/21/2016

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise:

Required expertise includes an in depth knowledge of, and experience with, Federal Regulations, DOT OIG practices, and with Airports enforcing compliance with CFR Title 49, Parts 23 and 26 (attached to this request).

B. Which, if any, civil service class(es) normally perform(s) this work?
1824,

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If yes, explain:
No.

4. Why Classified Civil Service Cannot Perform

A. Explain why civil service classes are not applicable:

Existing civil service classifications do not possess the required knowledge and compliance experience of enforcing Airport adherence to DBE and ACDBE CFRs.

B. Would it be practical to adopt a new civil service class to perform this work? Explain.

No as the specialized expertise is required on an intermittent basis. Certain functions, such as the goal-setting task, is conducted once every three years, while utilization reporting is submitted annually. Services and funding are inconsistent, partially driven by DBE provisions from new eligible construction projects and also dependent on

5. Additional Information (if "yes", attach explanation)**YES NO**

- | | | |
|--|--------------------------|-------------------------------------|
| A. Will the contractor directly supervise City and County employee? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| B. Will the contractor train City and County employee?
None. Services are intermittent & depend on new concession opportunities | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| C. Are there legal mandates requiring the use of contractual services? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| D. Are there federal or state grant requirements regarding the use of contractual services? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| E. Has a board or commission determined that contracting is the most effective way to provide this service? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |
| F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? | <input type="checkbox"/> | <input checked="" type="checkbox"/> |

☒ THE ABOVE INFORMATION IS SUBMITTED AS COMPLETE AND ACCURATE ON BEHALF OF THE DEPARTMENT HEAD
ON 10/26/2016 BY:

Name: Cynthia Avakian Phone: 650-821-2014 Email: cynthia.avakian@flysfso.com

Address: PO Box 8097 San Francisco, CA 94128

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: SHERIFF

Dept. Code: SHF

Type of Request: ☐ Initial ☒ Modification of an existing PSC (PSC # 44721 - 17/18)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Install, configure, and implement a Jail Management System

Funding Source: General Fund

PSC Original Approved Amount: \$600,000

PSC Original Approved Duration: 07/01/18 - 06/30/23 (5 years)

PSC Mod#1 Amount: \$3,205,440

PSC Mod#1 Duration: 04/01/21-03/31/26 (2 years 39 weeks)

PSC Cumulative Amount Proposed: \$3,805,440

PSC Cumulative Duration Proposed: 7 years 39 weeks

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Install, configure, and implement a Jail Management System (JMS) software solution; along with software licenses, professional services, training, maintenance, and support. The JMS is required by SFSD to streamline and manage jail operations and inmate movements, automate booking and jail release functions, housing classification, and manage incarceration records.

Scope Change

The overall scope remains unchanged. The Sheriff's Office evaluation provided more detail to the business processes and functional requirements. The scope will include project initiation, business analysis and requirements definition, data migration analysis and planning, interface analysis and planning, functional design considerations, as well as a training framework/training plan.

B. Explain why this service is necessary and the consequence of denial:

The current JMS has exceeded its useful life and is not scalable to work in conjunction with the SFSD's existing Microsoft Dynamic Customer Relationship Management (CRM) licenses. Denial of this request will prevent SFSD from: 1) Effectively and efficiently complying with various California laws that mandate the sharing of SFSD data with the State and law enforcement agencies. 2) Updating an antiquated legacy application, to ensure critical functionality for departmental operations; and it will restrict SFSD's ability to collect, analyze, and share data for its operational decision-making.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Current New World JMS has been in place since 2005. Original contract was administered by the Department of Technology.

D. Will the contract(s) be renewed?

The annual software license and maintenance will be renewed if accepted and deployed in the production environment following testing.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

The initial PSC had a contract period of 5 years with a start date of 7/01/2018. The Sheriff's Office's 12-month evaluation of the non-production DXC software was delayed and did not begin until 01/01/2019. The contract was set to continue only if funding was available and the department elected to do so. The initial scope did not have the 12-month evaluation factored in the contract duration. The modification will add an additional year to our original PSC, from 5 years to 6 years.

2. Reason(s) for the Request

A. Display all that apply

☒ Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

Following several meetings with the Committee on Information Technology (COIT), the SFSD determined the specific engineering skills with required experience in a county jail environment resulted in a service that is not available through the City. In addition, the JMS solution would be proprietary software application.

B. Reason for the request for modification:

The Sheriff's Office procured an initial non-production DXC Offender360 license for a 12-month evaluation funded by COIT for \$250,000. The Sheriff's Office confirmed that DXC Offender360 meets the Corrections Technology Association's (CTA) correctional standards for information management systems that are tightly integrated "out of the box." The Sheriff's Office is proposing to amend the existing DXC contract by increasing the PSC amount from \$600,000 to \$3,600,000 and extending the expiration date to 03/31/2026. Amending the existing DXC contract will accommodate and facilitate the procurement and implementation of a complete production of Offender360. The current New World/Tyler Sheriff Jail Management System (JMS) is limited in features and functionality required to efficiently operate and manage the San Francisco Sheriff's Office Jails. The current system also limits the Sheriff's Office's ability to share and integrate information with its Justice partners because the system is outdated. By amending the contract, the proposed Offender360 Jail Management System will allow the Sheriff's Office to modernize its Jail Management System processes and enables the Sheriff to comply with the DOJ, CLETS, CJI, NCIC penal codes in managing the operations involving justice involved persons and the superior courts system.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Database and software engineering specific to a county jail environment.

B. Which, if any, civil service class(es) normally perform(s) this work? none

- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.

Following several meetings with the Committee on Information Technology (COIT), the SFSD determined the specific engineering skills with required experience in a county jail environment resulted in a service that is not available through the City. In addition, the JMS solution would be proprietary and the contractor do not authorize any third party to provide products or services related to their software.

- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. The proprietary nature of the application software will not allow for any third party to perform work related to the solution.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.

The Contractor will provide user training workshops to approximately 8 - 10 SFSD staff. The training will be 8 hour sessions per day. There will be four 2-day training workshops, totaling 64 hours. The training will cover necessary topics associated with Information Technology administration training for staff to configure the JMS prototype to business requirement specification and update the prototype per stakeholders feedback.

- C. Are there legal mandates requiring the use of contractual services?

No.

- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.

No.

- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

Yes, amend current approved contract with DXC .

7. **Union Notification:** On 11/30/20, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Henry Gong Phone: 415-554-7241 Email: henry.gong@sfgov.org

Address: 1 Dr. Carlton B. Goodlett Place, San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 44721 - 17/18

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 01/04/2021

Receipt of Union Notification(s)

Choi, Suzanne (HRD)

From: DHR-PSCCoordinator, DHR (HRD)
Sent: Thursday, December 10, 2020 1:23 PM
To: 'laborers261@gmail.com'; 'ramonliuna261@gmail.com'
Subject: FW: Receipt of Modification Request to PSC # 44721 - 17/18 - MODIFICATIONS

-----Original Message-----

From: dhr-psccordinator@sfgov.org <dhr-psccordinator@sfgov.org> On Behalf Of henry.gong@sfgov.org
Sent: Monday, November 30, 2020 9:18 AM
To: Gong, Henry (SHF) <henry.gong@sfgov.org>; Laxamana, Junko (BOS) <junko.laxamana@sfgov.org>; jennifer.esteen@seiu1021.org; emathurin@cirseiu.org; abush@cirseiu.org; sbabaria@cirseiu.org; anthony@dc16.us; mlobre@sfpoa.org; tony@sfpoa.org; tracym@sfpoa.org; mleach@ibt856.org; rooferslocal40@gmail.com; sal@local16.org; Criss@SFMEA.com; Meyers, Julie (HSA) <Julie.Meyers@sfgov.org>; seichenberger@local39.org; camaguey@sfmea.com (contact) <camaguey@sfmea.com>; ablood@cirseiu.org; kcartermartinez@cirseiu.org; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; sarah.wilson@seiu1021.org; kschumacher@ifpte21.org; kpage@ifpte21.org; tjenkins@uapd.com; eerbach@ifpte21.org; tmathews@ifpte21.org; amakayan@ifpte21.org; jb@local16.org; Ricardo.lopez@sfgov.org; Basconillo, Katherine (PUC) <kbasconillo@sfgwater.org>; Sandeep.lal@seiu1021.me; pcamarillo_seiu@sbcglobal.net; MRainsford@local39.org; Wendy.Frigillana@seiu1021.org; pscreview@seiu1021.org; pkim@ifpte21.org; agonzalez@iam1414.org; ted.zarzecki@seiu1021.net; leah.berlanga@seiu1021.org; gail@sffdlocal798.org; cityworker@sfcwu.org; davidmkersten@gmail.com; djohnson@opcmialocal300.org; ramonliuna261@gmail.comnet; ablood@cirseiu.org; pkarinen@nccrc.org; tony@dc16.us; stevek@bac3-ca.org; xiumin.li@seiu1021.org; Poon, Sin Yee (HSA) <sin.yee.poon@sfgov.org>; smcgarry@nccrc.org; rmitchell@twusf.org; grojo@local39.org; jduritz@uapd.com; staff@SFMEA.com; mike@dc16.us; khughes@ibew6.org; L21PSCReview@ifpte21.org; sfsmsa@gmail.com; bart@dc16.us; david.canham@seiu1021.org; jtanner940@aol.com; oashworth@ibew6.org; L21PSCReview@ifpte21.org; LiUNA.local261@gmail.com; local200twu@sbcglobal.net; speedy4864@aol.com; Christina@SFMEA.com; ecdemvoter@aol.com; thomas.vitale@seiu1021.org; DHR-PSCCoordinator, DHR (HRD) <dhr-psccordinator@sfgov.org>
Subject: Receipt of Modification Request to PSC # 44721 - 17/18 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The SHERIFF -- SHF has submitted a modification request for a Personal Services Contract (PSC) for \$3,205,440 for services for the period April 1, 2021 – March 31, 2026. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/15751>

Email sent to the following addresses: L21PSCReview@ifpte21.org pkim@ifpte21.org eerbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com ecassidy@ifpte21.com amakayan@ifpte21.org junko.laxamana@sfgov.org

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: SHERIFF -- SHF

Dept. Code: SHF

Type of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Install, configure, and implement a Jail Management System

Funding Source: General Fund

PSC Duration: 5 years

PSC Amount: \$600,000

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Install, configure, and implement a Jail Management System (JMS) software solution; along with software licenses, professional services, training, maintenance, and support. The JMS is required by SFSD to streamline and manage jail operations and inmate movements, automate booking and jail release functions, housing classification, and manage incarceration records.

B. Explain why this service is necessary and the consequence of denial:

The current JMS has exceeded its useful life and is not scalable to work in conjunction with the SFSD's existing Microsoft Dynamic Customer Relationship Management (CRM) licenses. Denial of this request will prevent SFSD from: 1) Effectively and efficiently complying with various California laws that mandate the sharing of SFSD data with the State and law enforcement agencies. 2) Updating an antiquated legacy application, to ensure critical functionality for departmental operations; and it will restrict SFSD's ability to collect, analyze, and share data for its operational decision-making.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

The JMS is currently being provided by New World and has been the JMS for SFSD since 2005.

D. Will the contract(s) be renewed?

The annual software license and maintenance will be renewed if accepted and deployed in the production environment following testing.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

This professional services contract is for the procurement of a software application to meet the jail management system (JMS) needs of the San Francisco Sheriff's Department (SFSD). The prototype application would be installed on a non-production environment for 12 months for evaluation. If the prototype is determined to meet the SFSD's scope of work, the Contractor will deploy the JMS and booking module in a production environment. Contractor will provide training onsite at SFSD facilities. The \$600,000 PSC amount includes software licenses, training and software engineering.

2. Reason(s) for the Request

A. Indicate all that apply (be specific and attach any relevant supporting documents):

☒ Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

B. Explain the qualifying circumstances:

Following several meetings with the Committee on Information Technology (COIT), the SFSD determined the specific engineering skills with required experience in a county jail environment resulted in a service that is not available through the City. In addition, the JMS solution would be proprietary software application.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Database and software engineering specific to a county jail environment.

B. Which, if any, civil service class(es) normally perform(s) this work? none

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Following several meetings with the Committee on Information Technology (COIT), the SFSD determined the specific engineering skills with required experience in a county jail environment resulted in a service that is not available through the City.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

Following several meetings with the Committee on Information Technology (COIT), the SFSD determined the specific engineering skills with required experience in a county jail environment resulted in a service that is not available through the City. In addition, the JMS solution would be proprietary and the contractor do not authorize any third party to provide products or services related to their software.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. The proprietary nature of the application software will not allow for any third party to perform work related to the solution.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.

B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Yes. The Contractor will provide user training workshops to approximately 8 - 10 SFSD staff. The training will be 8 hour sessions per day. There will be four 2-day training workshops, totaling 64 hours. The training will cover necessary topics associated with Information Technology administration training for staff to configure the JMS prototype to business requirement specification and update the prototype per stakeholders feedback.

C. Are there legal mandates requiring the use of contractual services?
No.

D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.

E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.

F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 04/03/2018, the Department notified the following employee organizations of this PSC/RFP request:
all unions were notified

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Henry Gong Phone: 415-554-7241 Email: henry.gong@sfgov.org

Address: 1 Dr. Carlton B. Goodlett Place San Francisco, CA 94102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 44721 - 17/18

DHR Analysis/Recommendation:
Commission Approval Required
06/04/2018 DHR Approved for 06/04/2018

action date: 06/04/2018
Approved by Civil Service Commission

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - TECHNOLOGY

Dept. Code: TIS

Type of Request: ☐ Initial ☒ Modification of an existing PSC (PSC # 49622 - 18/19)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Installation, Configuration and Modification Services for Jail Management Software

Funding Source: General Fund

PSC Original Approved Amount: \$500,000

PSC Original Approved Duration: 04/01/19 - 03/31/21 (2 years)

PSC Mod#1 Amount: \$618,277

PSC Mod#1 Duration: 04/01/21-03/31/22 (1 year)

PSC Cumulative Amount Proposed: \$1,118,277

PSC Cumulative Duration Proposed: 3 years

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Vendor will install a Jail Management System (JMS) and to work with San Francisco Sheriff Department Information Technology Support Services Staff (ITSS) to configure a prototype of the Inmate Booking Module in JMS. This service shall include a subscription to use the JMS software in conjunction with the San Francisco Sheriff Department existing Microsoft Dynamic CRM licenses. The prototype would be used by San Francisco Sheriff Department in a non-production environment for the duration of the subscription (12 months) in order to confirm that Vendor's JMS will meet the jail management system needs of San Francisco Sheriff Department.

The scope, assumptions, and costs presented in this SOW represent Vendor proprietary experience and knowledge.

A. Project Scope

Vendor will work with San Francisco Sheriff Department to install Offender360 JMS and all technology components associated with the software in a non-production San Francisco Sheriff Department environment on their server hardware. Vendor will conduct a series of training workshops with San Francisco Sheriff Department Information Technology Staff to enable San Francisco Sheriff Department To make configuration changes to the standard JMS Booking module and develop a non-production prototype that meets the specific business requirements of San Francisco Sheriff Department for the booking process. Vendor will include in the services a 12 month subscription of the Offender360 JMS software to allow San Francisco Sheriff Department users to test the application in a non-production environment for up to 12 months. The result of this project will provide a prototype that will enable San Francisco Sheriff Department to validate and confirm that Offender360 will meet the jail management system needs of San Francisco Sheriff Department.

B. Explain why this service is necessary and the consequence of denial:

The software is proprietary and the manufacturer is the owner of the source codes. Furthermore, the City loses the right to support services from the manufacturer if the software is modified without oversight by Tyler Technologies. These services include a) correcting any errors, defects or malfunctions to the system; b) telephone and/or online support concerning the installation and use of its software; c) training in the installation and use of the software; d) on-site consulting and application development services.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, under PSC 49622-18/19.

D. Will the contract(s) be renewed?

Yes, it is a possibility.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

Tyler Contract No. 1000016039 provided an original term of two (2) years, April 1, 2019 to March 31, 2021, with an option to extend terms for one (1) additional year.

2. Reason(s) for the Request

A. Display all that apply

☒ Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

Explain the qualifying circumstances:

The software is proprietary and the manufacturer is the owner of the source codes. Furthermore, the City loses the right to support services from the manufacture, if the software is modified without oversight by vendor. These services include, but not limited to a) correcting any errors, defects or malfunctions to the system; b) telephone and/or online support concerning the installation and use of its software; c) training in the installation and use of the software; d) on-site consulting and application development services.

B. Reason for the request for modification:

Amend the existing Tyler Contract (No. 1000016039) to exercise an option for additional one (1) year terms for Maintenance and Support, per Exhibit C - Maintenance and Support Agreement. Exercising the 1 year extension the will allow the Sheriff's Office to facilitate the procurement and implementation of a modern and efficient Jail Management System (JMS) to replace Tyler. The new JMS will meet the Corrections Technology Association's (CTA) correctional standards for information management systems. This PSC Modification will also correct the aggregate contract amount to \$1,118,277. The original PSC contract amount of \$500,000 should have been \$748,422, the actual Maintenance and Support amount for years 1 and 2.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Very specific working knowledge of the vendor's Jail Management System software platform and a solid understanding of the business processes in the Sheriff's Department.

- B. Which, if any, civil service class(es) normally perform(s) this work? 1054, IS Business Analyst-Principal; 1063, IS Programmer Analyst-Senior;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
The vendor is the manufacturer of the software and the software is proprietary to the manufacturer.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No, the classes exists, but City employees do not have access to the proprietary software source codes to complete any configuration. If the City does configure the software, it nullifies its access to support and service from the vendor.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
Training is not applicable.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes, Tyler provides the proprietary Maintenance and Support.

7. **Union Notification:** On 12/04/20, the Department notified the following employee organizations of this PSC/RFP request:
Architect & Engineers, Local 21;

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Henry Gong Phone: 415-554-7241 Email: henry.gong@sfgov.org

Address: One South Van Ness Avenue, 2nd Floor, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 49622 - 18/19

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 01/04/2021

Receipt of Union Notification(s)

Choi, Suzanne (HRD)

From: dhr-psccordinator@sfgov.org on behalf of henry.gong@sfgov.org
Sent: Friday, December 4, 2020 11:02 AM
To: Gong, Henry (SHF); ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; pkim@ifpte21.org; L21PSCReview@ifpte21.org; DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 49622 - 18/19 - MODIFICATIONS

PSC RECEIPT of Modification notification sent to Unions and DHR

The GENERAL SERVICES AGENCY - TECHNOLOGY -- TIS has submitted a modification request for a Personal Services Contract (PSC) for \$618,277 for services for the period April 1, 2021 – March 31, 2022. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/15778>

Email sent to the following addresses: L21PSCReview@ifpte21.org pkim@ifpte21.org eerbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com ecassidy@ifpte21.com

Additional Attachment(s)



Exhibit A

Investment Summary

The following Investment Summary details the software, products, and services to be delivered by us to you under the Agreement. This Investment Summary is effective as of the Effective Date. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Agreement.

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Sales Quotation For
 San Francisco County Sheriff
 120 14th St
 San Francisco , CA 94103-3743
 Phone: 4157342301

Quoted By: Terri Minter
Date: 3/12/2019
Quote Expiration: 6/21/2019
Quote Name: San Francisco Sheriff Office - ESRI and Up to 32 hours to build an additional Non-Production Environment
Quote Number: 2018-26120-2
Quote Description: Non-Production Environment
Billing Address
Attn: Finance
 San Francisco Sheriff Office
 1 Dr. Carlton B Goodlett Plaza
 San Francisco , CA 94102

Services	Description	Quantity	Unit Price	Unit Discount	Extended Price
	Up to 16 hours to build out a second GIS Server as a new GIS test server (remote)	16	\$145	\$0	\$2,320
	Up to 16 hours to build out a second Database server as a new Database Test Server (remote)	16	\$145	\$0	\$2,320

TOTAL:

\$4,640

Third Party Hardware, Software and Services

Description	Quantity	Unit Price	Total	Unit Maintenance	Year One Maintenance
ESRI Second Environment [Testing]	1	\$11,250	\$11,250	\$0	\$0
3rd Party Hardware Sub-Total:		\$0	\$0		\$0
3rd Party Software Sub-Total:		\$11,250	\$11,250		\$0
TOTAL:			\$11,250		\$0

Summary
 Total Tyler Software
 Total Annual Fees
 Total Tyler Services
 Total Other Costs

One Time Fees
 \$0
 \$4,640
 \$0

Recurring Fees
 \$0
 \$0



P-540 (8-14)

Contract No. 1000016039



Exhibit A
Schedule 1
Customer Software Inventory

	<u>Contract Date</u>	<u>Units</u>
Aegis Public Safety		
Law Enforcement Records Software		
LE Records Multi-Jurisdictional Base MSP	12/30/04	999
LE Records Federal & State Compliance MSP	12/30/04	1
Field Investigations MSP	12/30/04	1
Case Management MSP	12/30/04	1
Public Safety Interface Software		
State/NCIC Interface MSP	12/30/04	1
On-Line Warrants & Warrants Interface to State/NCIC	12/30/04	1
On-Line Property Checks Interface to State/NCIC	12/30/04	1
Identix Interface MSP	12/30/04	1
Livscan Interface MSP	12/30/04	1
On-Line Global Subjects Interface to State/NCIC	12/30/04	1
Corrections Management Software		
Corrections Management Base MSP	12/30/04	999
Corrections Compliance Federal & State Reporting	12/30/04	1
Other Software for Public Safety		
Site License - RMD, Mobile	12/30/04	1
Site License - Corrections	12/30/04	1
Software Tailoring	12/30/04	1
Photo Imaging Software		
Digital Imaging MSP	12/30/04	1
Public Safety Mug Shots/Line-Ups MSP	12/30/04	1
Data Analysis/Crime Mapping/Mgr Reporting		
Analysis Base With One Application	12/30/04	1
Analysis Second Application	12/30/04	1
Mobile		
Mobile Server Software		
Field Reporting Server	12/30/04	500
Data Merge to Aegis/MSP LE Records	12/30/04	500
New World Mobile Software		
LE Field Reporting	12/30/04	350
LE Field Reporting Compliance	12/30/04	350
Regional Data Sharing		
Server Software		
Webserver Software	12/30/04	1,20
Third Party ESRI Embedded Applications		
ESRI Embedded Applications - New		
ArcGIS Advanced Enterprise Server Integration	2/15/12	1

	Contract Date	Units		
Dropped modules - no longer covered by \$SMA				
Aegis Public Safety				
Law Enforcement Records Software				
Pawn Shops MSP	12/30/04	1	Dropped	12/18/14
Activity Reporting and Scheduling MSP	12/30/04	1	Dropped	12/18/14
Property Room Bar Coding MSP	12/30/04	1	Dropped	12/18/14
Career Criminal Registry MSP	12/30/04	1	Dropped	12/18/14
Orders of Protection MSP	12/30/04	1	Dropped	12/18/14
Narcotics Management MSP	12/30/04	1	Dropped	12/18/14
Gang Tracking MSP	12/30/04	1	Dropped	12/18/14
Briefing Summary MSP	12/30/04	1	Dropped	12/18/14
Demographic Profiling Reporting MSP	12/30/04	1	Dropped	12/18/14
Corrections Management Software				
Enhanced Court Tracking MSP	12/30/04	1	Dropped	12/18/14
Bar Coding MSP	12/30/04	1	Dropped	12/18/14
Commissary Interface MSP	4/18/11	1	Dropped	10/30/12
AegisMSP Redundancy				
Redundancy Base With One Application	12/30/04	1	Dropped	6/15/06
Mobile				
Mobile Server Software				
Base CAD/NCIC/Messaging	12/30/04	500	Dropped	12/18/14
New World Mobile Software				
LE Accident Field Reporting	12/30/04	350	Dropped	12/18/14
LE Accident Field Reporting Compliance	12/30/04	350	Dropped	12/18/14
Demographic Profiling Questionnaire	12/30/04	350	Dropped	12/18/14
Regional Data Sharing				
Server Software				
400/MSP Server Software	12/30/04	2	Dropped	12/18/14



Support Amendment

This Support Amendment is made, as of the date set forth below (the "Effective Date") by and between Tyler Technologies, Inc. with offices at 840 West Long Lake Road, Troy, MI 48098 ("Tyler") and the client identified below ("Client").

WHEREAS, New World Systems Corporation ("New World") and Client are parties to a License and Services Agreement ("Agreement") under which Client licensed the New World software itemized therein; and

WHEREAS, Tyler and New World merged effective November 16, 2015, with Tyler as the surviving entity; and

WHEREAS, Tyler and Client desire to update the applicable maintenance and support services terms;

NOW THEREFORE, in consideration of the mutual promises hereinafter contained, Tyler and Client agree as follows:

1. The New World software, as set forth in Exhibit 1 attached hereto, wherein Client has paid maintenance and support fees through the Effective Date, shall mean the "Tyler Software" for purposes of this Support Amendment.
2. Tyler shall provide maintenance and support services on the Tyler Software according to the terms of Exhibit 2 to this Support Amendment.
3. For the term specified in the applicable invoice, Client shall remit to Tyler maintenance fees in the amount set forth therein. Payment is due within thirty (30) days of the invoice date.
4. This Support Amendment shall be governed by and construed in accordance with the terms and conditions of the Agreement.
5. All other terms and conditions of the Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties hereto have executed this Support Amendment as of the dates set forth below.

Tyler Technologies, Inc.

City and County of San Francisco, CA

By: _____

By: _____

Name: Bryan Proctor

Name: _____

Title: President, Public Safety Division

Title: _____

Date: _____

Date: _____





Exhibit 1

New World Software

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Remittance
Tyler Technologies, Inc.
(FEIN 75-2303920)
P.O. Box 203556
Dallas, TX 75320-3556

Questions

Tyler Technologies -
Phone: 1-800-772-2260 Press 2
Fax: 1-866-673-3274
Email: ar@tylertech.com

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Company	Order No.	Date	Page
130	11827	09/22/2020	1 of 3

To: San Francisco
Attn: Linda Bui
1 Dr. Carlton B Goodlett Place Room #456
San Francisco, CA 94102

Ship To: San Francisco
Attn: Linda Bui
1 Dr. Carlton B Goodlett Place Room #456
San Francisco, CA 94102

Customer Grp/No.	Customer PO#	Payment Terms	Currency Code	Ship Via	Salesperson Cd
1 50198		Net 60	USD	ELEC	

No. Item/ Description/ Comments	Drop Ship	# Users	Quantity	U/M	Unit Price	Disc %	Total Cost
Contract No.: San Francisco, CA							
1 Renewal: NWPS3PTYMNT New World Third Party Maintenance - ArcGIS Advanced Enterprise Server Integration Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	2,807.40	.00	2,807.40
2 Renewal: NWPSLECASEMM Additional New World Software for LE Records Standard Maintenance - Case Management Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	4,706.85	.00	4,706.85
3 Renewal: NWPSLEFIELDM Additional New World Software for LE Records Standard Maintenance - Field Investigations Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	4,706.85	.00	4,706.85
4 Renewal: NWPSLEINDEXM Additional New World Software for LE Records Standard Maintenance - Identix Interface Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	4,706.85	.00	4,706.85
5 Renewal: NWPSLEFEDM New World Federal and State Compliance Reporting for LE Records Standard Maintenance - Federal UCR/IBR Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	4,706.85	.00	4,706.85
6 Renewal: NWPSMLTBASELEM New World Multi-Jurisdictional Base LE Records Standard Maintenance Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	58,837.33	.00	58,837.33
7 Renewal: NWPS3LEOLGLBLM New World Third Party LE Records Interface Standard Maintenance - On-Line Global Subjects Interface to State/NCIC Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	6,472.62	.00	6,472.62
8 Renewal: NWPS3LEOLPROPM New World Third Party LE Records Interface Standard Maintenance - On-Line Property Checks Interface to State/NCIC Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	6,472.62	.00	6,472.62
9 Renewal: NWPS3LEOLWNTM New World Third Party LE Records Interface Standard Maintenance - On-Line Wants and Warrants Interface to State/NCIC Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	6,472.62	.00	6,472.62



Remittance
Tyler Technologies, Inc.
(FEIN 75-2303920)
P.O. Box 203556
Dallas, TX 75320-3556

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Questions

Tyler Technologies -
Phone: 1-800-772-2260 Press 2
Fax: 1-866-673-3274
Email: ar@tylertech.com

Company	Order No.	Date	Page
130	11827	09/22/2020	2 of 3

No.	Item/ Description/ Comments	Drop Ship	# Users	Quantity	U/M	Unit Price	Disc %	Total Cost
10	Renewal: NWPS3LENWSNCICM New World Third Party LE Records Interface Standard Maintenance - New World State/NCIC Interface Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	10,787.33	.00	10,787.33
11	Renewal: NWPSCORRFSRMSPM New World Corrections Compliance Federal & State Reporting MSP Standard Maintenance Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	5,099.00	.00	5,099.00
12	Renewal: NWPSCORRBASEM New World Corrections Management Standard Maintenance Base Package Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	47,069.64	.00	47,069.64
13	Renewal: NWPS3CORRLIVEM New World Third Party Corrections Interface Standard Maintenance - Livescan Interface Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	4,706.85	.00	4,706.85
14	Renewal: NWPSITELICM New World Site License Standard Maintenance - Corrections Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	14,512.70	.00	14,512.70
15	Renewal: NWPSITELICM New World Site License Standard Maintenance - RMS, Mobile Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	63,937.44	.00	63,937.44
16	Renewal: NWPSWTAILM New World Standard Maintenance - Software Tailoring Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	15,690.25	.00	15,690.25
17	Renewal: NWPSIMLEPUBM New World Imaging Standard Maintenance - Digital imaging Software Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	0.00	.00	0.00
18	Renewal: NWPSIMLEPUBM New World Imaging Standard Maintenance - LE Public Safety Lineups/Mug Shots Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	16,278.46	.00	16,278.46
19	Renewal: NWPSAB1ASM New World Analysis Base With One Application Standard Maintenance Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	11,767.69	.00	11,767.69
20	Renewal: NWPSAB2ASM New World Analysis Base Second Application Maintenance Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	5,883.29	.00	5,883.29
21	Renewal: NWPSDATAMERGEM New World Data Merge to Aegis/MSP LE Records Standard Maintenance	No	1	1	EA	1,470.54	.00	1,470.54



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Remittance
Tyler Technologies, Inc.
(FEIN 75-2303920)
P.O. Box 203556
Dallas, TX 75320-3556

Questions

Tyler Technologies -
Phone: 1-800-772-2260 Press 2
Fax: 1-866-673-3274
Email: ar@tylertech.com

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Company	Order No.	Date	Page
130	11827	09/22/2020	3 of 3

No.	Item/ Description/ Comments	Drop Ship	# Users	Quantity	U/M	Unit Price	Disc %	Total Cost
	Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months							
22	Renewal: NWPSFDREPSVM New World Field Reporting Server Standard Maintenance Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	5,883.29	.00	5,883.29
23	Renewal: NWPSLEFDRPM New World Law Enforcement Mobile Unit Standard Maintenance - Field-Based Reporting - LE Field Reporting Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	37,753.98	.00	37,753.98
24	Renewal: NWPSLEFDRPCMM New World Law Enforcement Mobile Unit Standard Maintenance - Field-Based Reporting - LE Field Reporting Compliance Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months	No	1	1	EA	7,551.01	.00	7,551.01
25	Renewal: NWPS3CADWEBEOCM New World Maintenance - Webserver Software Maintenance Plan: ; Start: 04/01/2021, End: 03/31/2022; Term: 12 months :	No	1	1	EA	21,573.54	.00	21,573.54

Does not include any applicable taxes

Order Total: 369,855.00

Comments: Upon acceptance please email your purchase order to PO@tylertech.com



Exhibit 2

Maintenance and Support Agreement

Tyler (“we”) will provide Client (“you”) with the following maintenance and support services for the Tyler Software. Capitalized terms not otherwise defined will have the meaning assigned to such terms in the Support Agreement.

1. **Term.** We provide maintenance and support services on an annual basis. The initial term commences on April 1, 2021 and remains in effect for one (1) year unless terminated in writing by either party at least ninety (90) days prior to the end of the then-current term.
2. **Maintenance and Support Fees.** Your maintenance and support fees for the initial term for the Tyler Software will be listed in the applicable invoice. We reserve the right to suspend maintenance and support services if you fail to pay undisputed maintenance and support fees within thirty (30) days of our written notice. We will reinstate maintenance and support services only if you pay all past due maintenance and support fees, including all fees for the periods during which services were suspended.
3. **Maintenance and Support Services.** As long as you are not using the Help Desk as a substitute for our training services on the Tyler Software, and you timely pay your maintenance and support fees, we will, consistent with our then-current Support Call Process:
 - 3.1 perform our maintenance and support obligations in a professional, good, and workmanlike manner, consistent with industry standards, to resolve Defects, as defined in the Agreement, in the Tyler Software (subject to any applicable release life cycle policy); provided, however, that if you modify the Tyler Software without our consent, our obligation to provide maintenance and support services on and warrant the Tyler Software will be void;
 - 3.2 a) provide support during our established support hours, currently Monday through Friday from 8:00 a.m. to 9:00 p.m. (Eastern Time Zone).

b) emergency 24-hour per day telephone support, for New World CAD only, seven (7) days per week for Licensed Standard Software. Normal service is available from 8:00 a.m. to 9:00 p.m. (Eastern Time Zone). After 8:00 p.m., the New World CAD phone support will be provided via pager and a support representative will respond to CAD service calls within 30 minutes of call initiation.
 - 3.3 maintain personnel that are sufficiently trained to be familiar with the Tyler Software and third party software, if any, in order to provide maintenance and support services;
 - 3.4 provide you with a copy of all releases to the Tyler Software (including updates and enhancements) that we make generally available without additional charge to customers who have a maintenance and support agreement in effect; and



3.5 provide non-Defect resolution support of prior releases of the Tyler Software in accordance with any applicable release life cycle policy.

4. Client Responsibilities. We will use all reasonable efforts to perform any maintenance and support services remotely. Currently, we use a third-party secure unattended connectivity tool called Bomgar, as well as GotoAssist by Citrix. Therefore, you agree to maintain a high-speed internet connection capable of connecting us to your PCs and server(s). You agree to provide us with a login account and local administrative privileges as we may reasonably require to perform remote services. We will, at our option, use the secure connection to assist with proper diagnosis and resolution, subject to any reasonably applicable security protocols. If we cannot resolve a support issue remotely, we may be required to provide onsite services. In such event, we will be responsible for our travel expenses, unless it is determined that the reason onsite support was required was a reason outside our control. Either way, you agree to provide us with full and free access to the Tyler Software, working space, adequate facilities within a reasonable distance from the equipment, and use of machines, attachments, features, or other equipment reasonably necessary for us to provide the maintenance and support services, all at no charge to us. We strongly recommend that you also maintain a VPN for backup connectivity purposes.
5. Hardware and Other Systems. If in the process of diagnosing a software support issue it is discovered that one of your peripheral systems or other software is the cause of the issue, we will notify you so that you may contact the support agency for that peripheral system. We cannot support or maintain third party products except as expressly set forth in the Agreement.

In order for us to provide the highest level of software support, you bear the following responsibility related to hardware and software:

- (a) All infrastructure executing Tyler Software shall be managed by you;
 - (b) You will maintain support contracts for all non-Tyler software associated with Tyler Software (including operating systems and database management systems, but excluding Third-Party Software, if any); and
 - (c) You will perform daily database backups and verify that those backups are successful.
6. Other Excluded Services. Maintenance and support fees do not include fees for the following services: (a) initial installation or implementation of the Tyler Software; (b) onsite maintenance and support (unless Tyler cannot remotely correct a Defect in the Tyler Software, as set forth above); (c) application design; (d) other consulting services; (e) maintenance and support of an operating system or hardware; (f) support outside our established support hours; or (g) installation, training services, or third party product costs related to a new release. Requested maintenance and support services such as those outlined in this section will be billed to you on a time and materials basis at our then current rates. You must request those services with at least one (1) weeks' advance notice.
7. Current Support Call Process. Our current Support Call Process for the Tyler Software is provided Schedule A to Exhibit 1.



Exhibit 1 Schedule A Support Call Process

If, after you have cut over to live production use of the Tyler Software, you believe that the Tyler Software is Defective, as "Defect" is defined in the Agreement, then you will notify us by phone, in writing, by email, or through the support website. Please reference the applicable Customer Support page at www.tylertech.com/client-support for information on how to use these various means of contact.

Documented examples of the claimed Defect must accompany each notice. We will review the documented notice and when there is a Defect, we shall resolve it at no additional cost to you beyond your then-current maintenance and support fees.

In receiving and responding to Defect notices and other support calls, we will follow the priority categorizations below. These categories are assigned based on your determination of the severity of the Defect and our reasonable analysis. If you believe a priority categorization needs to be updated, you may contact us again, via the same methods outlined above, to request the change.

In each instance of a Priority 1 or 2 Defect, prior to final Defect correction, the support team may offer you workaround solutions, including patches, configuration changes, and operational adjustments, or may recommend that you revert back to the prior version the Tyler Software pending Defect correction.

- (a) **Priority 1:** *A Defect that renders the Tyler Software inoperative; or causes the Tyler Software to fail catastrophically.*

After initial assessment of the Priority 1 Defect, if required, we shall assign a qualified product technical specialist(s) within one business (1) hour. The technical specialist(s) will then work to diagnose the Defect and to correct the Defect, providing ongoing communication to you concerning the status of the correction until the Tyler Software is operational without Priority 1 defect.

The goal for correcting a Priority 1 Defect is 24 hours or less.

- (b) **Priority 2:** *A Defect that substantially degrades the performance of the Tyler Software, but does not prohibit your use of the Tyler Software.*

We shall assign a qualified product technical specialist(s) within four (4) business hours of our receipt of your notice. The product technical specialist will then work to diagnose and correct the Defect. We shall work diligently to make the correction, and shall provide ongoing communication to you concerning the status of the correction until the Tyler Software is operational without Priority 2 Defect.



The goal for correcting a Priority 2 event is to include a correction in the next Tyler Software release.

- (c) **Priority 3:** *A Defect which causes only a minor impact on the use of the Tyler Software.*

We may include a correction in subsequent Tyler Software releases.

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - TECHNOLOGY -- TISDept. Code: TISType of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)Type of Service: Installation, Configuration and Modification Services for Jail Management SoftwareFunding Source: General FundPSC Amount: \$500,000PSC Est. Start Date: 04/01/2019PSC Est. End Date: 03/31/2021**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

Vendor will install a Jail Management System (JMS) and to work with San Francisco Sheriff Department Information Technology Support Services Staff (ITSS) to configure a prototype of the Inmate Booking Module in JMS. This service shall include a subscription to use the JMS software in conjunction with the San Francisco Sheriff Department existing Microsoft Dynamic CRM licenses. The prototype would be used by San Francisco Sheriff Department in a non-production environment for the duration of the subscription (12 months) in order to confirm that Vendor's JMS will meet the jail management system needs of San Francisco Sheriff Department.

The scope, assumptions, and costs presented in this SOW represent Vendor proprietary experience and knowledge.

A. Project Scope

Vendor will work with San Francisco Sheriff Department to install Offender360 JMS and all technology components associated with the software in a non-production San Francisco Sheriff Department environment on their server hardware. Vendor will conduct a series of training workshops with San Francisco Sheriff Department Information Technology Staff to enable San Francisco Sheriff Department To make configuration changes to the standard JMS Booking module and develop a non-production prototype that meets the specific business requirements of San Francisco Sheriff Department for the booking process. Vendor will include in the services a 12 month subscription of the Offender360 JMS software to allow San Francisco Sheriff Department users to test the application in a non-production environment for up to 12 months. The result of this project will provide a prototype that will enable San Francisco Sheriff Department to validate and confirm that Offender360 will meet the jail management system needs of San Francisco Sheriff Department.

B. Explain why this service is necessary and the consequence of denial:

The software is proprietary and the manufacturer is the owner of the source codes. Furthermore, the City loses the right to support services from the manufacturer if the software is modified without oversight by Tyler Technologies. These services include a) correcting any errors, defects or malfunctions to the system; b) telephone and/or online support concerning the installation and use of its software; c) training in the installation and use of the software; d) on-site consulting and application development services.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

This service was originally completed by New World Systems who has since been assumed by Tyler Technologies.

D. Will the contract(s) be renewed?

Yes, it is a possibility.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request**A. Indicate all that apply (be specific and attach any relevant supporting documents):**

- ☒ Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

B. Explain the qualifying circumstances:

The software is proprietary and the manufacturer is the owner of the source codes. Furthermore, the City loses the right to support services from the manufacture, if the software is modified without oversight by vendor. These services include, but not limited to a) correcting any errors, defects or malfunctions to the system; b) telephone and/or online support concerning the installation and use of its software; c) training in the installation and use of the software; d) on-site consulting and application development services.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Very specific working knowledge of the vendor's Jail Management System software platform and a solid understanding of the business processes in the Sheriff's Department.
- B. Which, if any, civil service class(es) normally perform(s) this work? 1054, IS Business Analyst-Principal; 1063, IS Programmer Analyst-Senior;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

The resources are available in the City, however the vendor is the manufacturer of the software and the software is proprietary to the manufacturer.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
The vendor is the manufacturer of the software and the software is proprietary to the manufacturer.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No, the classes exists, but City employees do not have access to the proprietary software source codes to complete any configuration. If the City does configure the software, it nullifies its access to support and service from the vendor.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contact? If so, please explain what that will entail; if not, explain why not.
Yes. Contractor shall provide System Administrative and Technical training to enable the City's IT staff to successfully configure and manage Offender360 JMS in their respective roles and responsibilities. a) Vendor will train up to eight (8) San Francisco Sheriff Department staff members b) Training will include four (4) two (2) day Workshops that will cover all necessary topics associated with IT Administrator Training for San Francisco Sheriff Department Staff to perform the following with assistance from Vendor. Additional training may be provided through web conferences if mutually agreed. c) Training Workshops will be conducted onsite at San Francisco Sheriff Department facilities to provide the following: i. Knowledge transfer, training, and documentation to allow in-house City IT staff to easily enhance and support the new system and technologies going forward; ii. Configure the JMS Booking module prototype to business requirements specification iii. Ability to update Prototype per San Francisco Sheriff Department stakeholder feedback. d) Vendor will provide all necessary training and classroom materials.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.

No.

- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.

No.

7. Union Notification: On 10/22/2018, the Department notified the following employee organizations of this PSC/RFP request:

Architect & Engineers, Local 21

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Jolie Gines Phone: 628 652 5074 Email: jolie.gines@sfgov.org

Address: One South Van Ness Avenue, 2nd Floor San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 49622 - 18/19

DHR Analysis/Recommendation:

action date: 03/04/2019

Commission Approval Required

Approved by Civil Service Commission

03/04/2019 DHR Approved for 03/04/2019

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY

Dept. Code: MTA

Type of Request: ☐ Initial ☒ Modification of an existing PSC (PSC # 40149 - 16/17)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Project & Construction Management Support Services for Van Ness Corridor Transit Improvement

Funding Source: Local, state, and federal; developer fees

PSC Original Approved Amount: \$5,400,000 PSC Original Approved Duration: 07/01/17 - 06/30/20 (3 years)

PSC Mod#1 Amount: \$2,400,000 PSC Mod#1 Duration: 12/06/17-12/31/21 (1 year 26 weeks)

PSC Mod#2 Amount: no amount added PSC Mod#2 Duration: 01/01/21-06/30/22 (25 weeks 5 days)

PSC Cumulative Amount Proposed: \$7,800,000 PSC Cumulative Duration Proposed: 5 years

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

This consultant services contract will provide project and construction management support services for the Van Ness Corridor Transit Improvement Project, specifically: Primavera P6 schedule updates and analysis; risk and contingency program management and project and construction management support in compliance with Federal Transit Administration oversight principles and best practices; quality assurance management and assistance in compliance with Caltrans source inspection requirements/practices; construction management in Caltrans right of way construction; technical writing; office engineering support in electronic document management systems; inspection support for non-recurrent/as-needed critical path construction; cost estimating support; and contract administration/claims engineering support services.

B. Explain why this service is necessary and the consequence of denial:

This project poses significant coordination, management, design, support and construction challenges. The City does not have the specialized expertise or staff resources to perform all the necessary, detailed work. Given the substantial capital investment to date and the targeted 3-year completion period, a failure to adequately staff a project of this size and complexity could jeopardize the receipt of over \$78 million in Federal New Starts and other funding.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, under PSC 40149-16/17

D. Will the contract(s) be renewed?

No.

- E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:
It is required due to the project delay.

2. Reason(s) for the Request

A. Display all that apply

☒ Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

The specialized technical expertise will be required for a period not to exceed 3 years for this project alone and will not be needed after this project is completed and operational.

B. Reason for the request for modification:

Van Ness Bus Rapid Transit (BRT) project got delayed due to underground utility conflicts and few design changes. This Modification only to extend the current contract until 06-30-2022.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Project and construction management expertise related to the specialized, detailed design and construction of roadway, catenary systems, electrical power transmissions system, signaling systems and architectural systems in a complex, "complete streets" urban environment with the specified expertise in Caltrans and FTA circular requirements and best practices.
- B. Which, if any, civil service class(es) normally perform(s) this work? 5203, Asst Engr; 5207, Assoc Engineer; 5241, Engineer; 6318, Construction Inspector; 6319, Senior Const Inspector;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
No single civil service class performs the range of specialized tasks detailed in the work scope. Positions in the civil service classifications 6318-Construction Inspector, 6319-Sr. Construction Inspector, 5241- Engineer, 5207- Associate Engineer, and 5203 Assistant Engineer (for civil, structural, electrical and traffic) perform some of the tasks detailed in the work scope. However, civil service classes at SFMTA, SFPUC, and DPW are performing major portions of the project design and construction support for ongoing construction.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Most of the technical expertise required for ongoing construction is currently included in existing engineering classifications 5203-Assistant Engineer, 5207-Associate Engineer, and 5241-Engineer. The

specialized technical expertise not included in those classes will be required for a short time for this project alone and will not be needed after this project is completed and operational.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Yes, HNTB Corporation, 49 Stevenson Street #600, SF CA 94105

7. Union Notification: On 12/02/20, the Department notified the following employee organizations of this PSC/RFP request:
Architect & Engineers, Local 21;

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Amy NUQUE Phone: 415-646-2802 Email: amy.nuque@sfmta.com

Address: 1 S. Van Ness Avenue, 6th Floor, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 40149 - 16/17

DHR Analysis/Recommendation:

Commission Approval Required

DHR Approved for 01/04/2021

Receipt of Union Notification(s)

Nuque, Amy

From: dhr-psccordinator@sfgov.org on behalf of amy.nuque@sfmta.com
Sent: Wednesday, December 2, 2020 2:56 PM
To: Nuque, Amy; ecassidy@ifpte21.com; WendyWong26@yahoo.com; wendywong26@yahoo.com; tmathews@ifpte21.org; kschumacher@ifpte21.org; kpage@ifpte21.org; eerbach@ifpte21.org; pkim@ifpte21.org; L21PSCReview@ifpte21.org; rod.goree@sfmta.com; DHR-PSCCoordinator, DHR (HRD)
Subject: Receipt of Modification Request to PSC # 40149 - 16/17 - MODIFICATIONS

This message is from outside the City email system. Do not open links or attachments from untrusted sources.

PSC RECEIPT of Modification notification sent to Unions and DHR

The MUNICIPAL TRANSPORTATION AGENCY -- MTA has submitted a modification request for a Personal Services Contract (PSC) for \$0 for services for the period January 1, 2021 – June 30, 2022. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrdrupal/node/10414>

Email sent to the following addresses: L21PSCReview@ifpte21.org pkim@ifpte21.org eerbach@ifpte21.org kpage@ifpte21.org kschumacher@ifpte21.org tmathews@ifpte21.org wendywong26@yahoo.com WendyWong26@yahoo.com ecassidy@ifpte21.com

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCYDept. Code: MTAType of Request: ☐ Initial ☒ Modification of an existing PSC (PSC # 40149 - 16/17)Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)Type of Service: Project & Construction Management Support Services for Van Ness Corridor Transit ImprovementFunding Source: Local, state, and federal; developer feesPSC Original Approved Amount: \$5,400,000PSC Original Approved Duration: 07/01/17 - 06/30/20 (3 years)PSC Mod#1 Amount: \$2,400,000PSC Mod#1 Duration: 12/06/17-12/31/21 (1 year 26 weeks)PSC Cumulative Amount Proposed: \$7,800,000PSC Cumulative Duration Proposed: 4 years 26 weeks**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

This consultant services contract will provide project and construction management support services for the Van Ness Corridor Transit Improvement Project, specifically: Primavera P6 schedule updates and analysis; risk and contingency program management and project and construction management support in compliance with Federal Transit Administration oversight principles and best practices; quality assurance management and assistance in compliance with Caltrans source inspection requirements/practices; construction management in Caltrans right of way construction; technical writing; office engineering support in electronic document management systems; inspection support for non-recurrent/as-needed critical path construction; cost estimating support; and contract administration/claims engineering support services.

B. Explain why this service is necessary and the consequence of denial:

This project poses significant coordination, management, design, support and construction challenges. The City does not have the specialized expertise or staff resources to perform all the necessary, detailed work. Given the substantial capital investment to date and the targeted 3-year completion period, a failure to adequately staff a project of this size and complexity could jeopardize the receipt of over \$78 million in Federal New Starts and other funding.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

Yes, under PSC 40149-16/17

D. Will the contract(s) be renewed?

No.

- E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:
not applicable

2. Reason(s) for the Request

- A. Display all that apply

☒ Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

Explain the qualifying circumstances:

The specialized technical expertise will be required for a period not to exceed 3 years for this project alone and will not be needed after this project is completed and operational.

- B. Reason for the request for modification:

The scope has not changed but the initial estimate of \$5.4 is not enough for this contract. The initial estimate is based on past history, and the hourly rates used in the estimates do not match with the current market rates.

3. Description of Required Skills/Expertise

- A. Specify required skills and/or expertise: Project and construction management expertise related to the specialized, detailed design and construction of roadway, catenary systems, electrical power transmissions system, signaling systems and architectural systems in a complex, "complete streets" urban environment with the specified expertise in Caltrans and FTA circular requirements and best practices.
- B. Which, if any, civil service class(es) normally perform(s) this work? 5203, Asst Engr; 5207, Assoc Engineer; 5241, Engineer; 6318, Construction Inspector; 6319, Senior Const Inspector;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
No single civil service class performs the range of specialized tasks detailed in the work scope. Positions in the civil service classifications 6318-Construction Inspector, 6319-Sr. Construction Inspector, 5241- Engineer, 5207- Associate Engineer, and 5203 Assistant Engineer (for civil, structural, electrical and traffic) perform some of the tasks detailed in the work scope. However, civil service classes at SFMTA, SFPUC, and DPW are performing major portions of the project design and construction support for ongoing construction.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Most of the technical expertise required for ongoing construction is currently included in existing engineering classifications 5203-Assistant Engineer, 5207-Associate Engineer, and 5241-Engineer. The

specialized technical expertise not included in those classes will be required for a short time for this project alone and will not be needed after this project is completed and operational.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
None
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 12/06/17, the Department notified the following employee organizations of this PSC/RFP request:

Architect & Engineers, Local 21;

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Rod Goree Phone: 415-646-2553 Email: rod.goree@sfmta.com

Address: 1 S. Van Ness Avenue, 6th Floor, San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 40149 - 16/17

DHR Analysis/Recommendation:

Commission Approval Not Required

Approved by DHR on 12/15/2017

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: MUNICIPAL TRANSPORTATION AGENCY -- MTADept. Code: MTAType of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)Type of Service: Project & Construction Management Support Services for Van Ness Corridor Transit ImprovementFunding Source: Local, state, and federal; developer feesPSC Duration: 3 yearsPSC Amount: \$5,400,000**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

This consultant services contract will provide project and construction management support services for the Van Ness Corridor Transit Improvement Project, specifically: Primavera P6 schedule updates and analysis; risk and contingency program management and project and construction management support in compliance with Federal Transit Administration oversight principles and best practices; quality assurance management and assistance in compliance with Caltrans source inspection requirements/practices; construction management in Caltrans right of way construction; technical writing; office engineering support in electronic document management systems; inspection support for non-recurrent/as-needed critical path construction; cost estimating support; and contract administration/claims engineering support services.

B. Explain why this service is necessary and the consequence of denial:

This project poses significant coordination, management, design, support and construction challenges. The City does not have the specialized expertise or staff resources to perform all the necessary, detailed work. Given the substantial capital investment to date and the targeted 3-year completion period, a failure to adequately staff a project of this size and complexity could jeopardize the receipt of over \$78 million in Federal New Starts and other funding.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

These services for Van Ness Corridor Transit Improvement Project has not been previously provided. However, on February 2, 2009, the Civil Service Commission approved similar services for the Central Subway Project (PSC No. 4096 - 08/09)

D. Will the contract(s) be renewed?

No.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.

not applicable

2. Reason(s) for the Request**A. Indicate all that apply (be specific and attach any relevant supporting documents):**

☒ Short-term or capital projects requiring diverse skills, expertise and/or knowledge.

B. Explain the qualifying circumstances:

The specialized technical expertise will be required for a period not to exceed 3 years for this project alone and will not be needed after this project is completed and operational.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Project and construction management expertise related to the specialized, detailed design and construction of roadway, catenary systems, electrical power transmissions system, signaling systems and architectural systems in a complex, "complete streets" urban environment with the specified expertise in Caltrans and FTA circular requirements and best practices.

- B. Which, if any, civil service class(es) normally perform(s) this work? 5203, Asst Engr; 5207, Assoc Engineer; 5241, Engineer; 6318, Construction Inspector; 6319, Senior Const Inspector;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: No.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

None. Neither the SFMTA nor the City has or will have the specialized expertise or staff resources required to perform all the necessary, detailed work within the 3-year time period expected to finish the Project.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.

No single civil service class performs the range of specialized tasks detailed in the work scope. Positions in the civil service classifications 6318-Construction Inspector, 6319-Sr. Construction Inspector, 5241- Engineer, 5207- Associate Engineer, and 5203 Assistant Engineer (for civil, structural, electrical and traffic) perform some of the tasks detailed in the work scope. However, civil service classes at SFMTA, SFPUC, and DPW are performing major portions of the project design and construction support for ongoing construction.

- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. Most of the technical expertise required for ongoing construction is currently included in existing engineering classifications 5203-Assistant Engineer, 5207-Associate Engineer, and 5241-Engineer. The specialized technical expertise not included in those classes will be required for a short time for this project alone and will not be needed after this project is completed and operational.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No. No training is required as all services to be provided by selected consultant's employees.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 04/26/2017, the Department notified the following employee organizations of this PSC/RFP request:

Architect & Engineers, Local 21

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Rod Goree Phone: 415-646-2553 Email: rod.goree@sfmta.com

Address: 1 S. Van Ness Avenue, 6th Floor San Francisco, CA 94103

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 40149 - 16/17

DHR Analysis/Recommendation:

Commission Approval Required

08/21/2017 DHR Approved for 08/21/2017

action date: 08/21/2017

Approved by Civil Service Commission

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN

Dept. Code: ADM

Type of Request: ☐ Initial ☒ Modification of an existing PSC (PSC # 40301 - 18/19)

Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)

Type of Service: Rental and cleaning of portable restrooms

Funding Source: General Fund

PSC Original Approved Amount: \$1,500,000 PSC Original Approved Duration: 07/01/19 - 06/30/22 (3 years)

PSC Mod#1 Amount: \$1,500,000 PSC Mod#1 Duration: no duration added

PSC Cumulative Amount Proposed: \$3,000,000 PSC Cumulative Duration Proposed: 3 years

1. Description of Work

A. Scope of Work/Services to be Contracted Out:

Services will include as-needed rental and cleaning of portable restrooms for City use at City construction worksites and City-sponsored events. The number and type of portable restrooms will vary. The need for the equipment may last from a day to a month, or more. Portable restrooms would be delivered to the needed sites. Janitorial services are needed to keep the equipment clean and functioning. These services include cleaning the rented, portable restrooms and wash stations, replacement of soap and paper products, removal of waste from the holding tanks into a waste-receiving truck, and trucking the waste to a facility for proper disposal of the waste. The need for the services is unpredictable and depends on the number of worksites, users, and duration of the rental. For example, more portable restrooms would be required during summer months when more City constructions occur.

B. Explain why this service is necessary and the consequence of denial:

The consequences of denial would be that City employees working a City construction sites would not have access to restrooms. If cleaning was not provided, the restrooms would need to be removed daily, cleaned, and new restrooms delivered for use the next day. For City sponsored events, individuals and families with children would not have access to clean restrooms.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

By contract

D. Will the contract(s) be renewed?

If there is a demand for the service.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why:

2. Reason(s) for the Request

A. Display all that apply

☒ Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

☒ Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

Explain the qualifying circumstances:

Portable restrooms will be provided as needed. Services will include equipment and storage space the City lacks.

B. Reason for the request for modification:

To add funds

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Ability to drive trucks carrying the portable restrooms and supplies, unload the items onto the site, clean restrooms, remove waste into a hauling truck, and dispose of waste according to applicable health and safety standards.

B. Which, if any, civil service class(es) normally perform(s) this work? 2708, Custodian; 2716, Custodial Assistant Supervisor; 2718, Custodial Supervisor; 2719, Janitorial Svcs Asst Sprv; 2720, Janitorial Services Supervisor; 7355, Truck Driver;

C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. Waste removal equipment and waste hauling truck as well as the rental of portable restrooms of different sizes and types, some with hand-washing stations, will be provided by contractor.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Not Applicable

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

A. Explain why civil service classes are not applicable.

The City does not own portable restrooms and storage facilities required as well as the equipment required for removal of waste. Cleaning and replacement of supplies is within the custodial classification series.

B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain: No. Services are as needed and would require purchase, maintenance and storage of portable restrooms.

6. Additional Information

A. Will the contractor directly supervise City and County employee? If so, please include an explanation.

No.

- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No training will be provided.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
Additional cleaning is necessary

7. Union Notification: On 09/28/20, the Department notified the following employee organizations of this PSC/RFP request:

SEIU 1021 Miscellaneous; Bldg Mtl & Constr Teamsters, L 853;

☒ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Joan Lubamersky Phone: 4155544859 Email: joan.lubamersky@sfgov.org

Address: One Carlton B. Goodlett Place, Room 362, San Francisco, CA 95102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 40301 - 18/19

DHR Analysis/Recommendation:

Civil Service Commission Action:

Commission Approval Required

DHR Approved for 01/04/2021

Receipt of Union Notification(s)

From: dhrrpscordinator@sfgov.org on behalf of joan.lubamersky@sfgov.org
To: [Lubamersky, Joan \(ADM\)](#); [Meyers, Julie \(HSA\)](#); Ricardo.lopez@sfgov.org; [Basconcillo, Katherine \(PUC\)](#); pcamarillo_seiu@sbcglobal.net; Wendy.Frigillana@seiu1021.org; pscreview@seiu1021.org; ted.zarzecki@seiu1021.net; davidmkersten@gmail.com; xiumin.li@seiu1021.org; [Poon, Sin Yee \(HSA\)](#); david.canham@seiu1021.org; jtanner940@aol.com; [DHR-PSCCoordinator, DHR \(HRD\)](#)
Subject: Receipt of Modification Request to PSC # 40301 - 18/19 - MODIFICATIONS
Date: Monday, September 28, 2020 9:21:42 PM

PSC RECEIPT of Modification notification sent to Unions and DHR

The GENERAL SERVICES AGENCY - CITY ADMIN -- ADM has submitted a modification request for a Personal Services Contract (PSC) for \$1,500,000 for services for the period July 1, 2019 – June 30, 2022. For all Modification requests, there is a 7-Day noticed to the union(s) prior to DHR Review.

If SEIU is one of the unions that represents the classes you identified in the initial PSC and the cumulative amount of the request is over \$100,000, there is a 60 day review period for SEIU

After logging into the system please select link below:

<http://apps.sfgov.org/dhrrupal/node/15582>

Email sent to the following addresses: jtanner940@aol.com
david.canham@seiu1021.org Sin.Yee.Poon@sfgov.org xiumin.li@seiu1021.org
davidmkersten@gmail.com ted.zarzecki@seiu1021.net pscreview@seiu1021.org
Wendy.Frigillana@seiu1021.org pcamarillo_seiu@sbcglobal.net
Kbasconcillo@sfgov.org Ricardo.lopez@sfgov.org Julie.Meyers@sfgov.org

From: [Lubamersky, Joan \(ADM\)](#)
To: [Dan Harrington](#)
Cc: [DHR-PSCCoordinator, DHR \(HRD\)](#)
Subject: Re: Portable bathrooms
Date: Thursday, October 8, 2020 1:19:39 PM

Thank you very much for responding.

Best regards

Joan

Sent from my iPhone

> On Oct 8, 2020, at 1:15 PM, Dan Harrington <dancingbear853@yahoo.com> wrote:

>

> Good afternoon Joanne this is in response to our conversation yesterday and your email Teamsters Local 853 is fine with your most recent email regarding pitstops trailers if you have any questions please feel free to contact Daniel Harrington Teamsters eight53

>

> Sent from my iPhone

>

>> On Oct 7, 2020, at 12:32 PM, Lubamersky, Joan (ADM) <joan.lubamersky@sfgov.org> wrote:

>>

>> Hello Dan.

>>

>> Following up on our conversation about pitstops, I was informed by DPW of the highlighted information below. I believe this respond to your concerns.

>>

>> Would you please respond to this email message if that is the case. I am glad this was clarified.

>>

>> "The Teamsters haul the Public Works portable pit-stop trailers to and from designated locations. They also service these trailers by filling with water and extracting/vacuuming out the waste with the use of our "Honey Wagon" truck. The contract for delivery of portable restrooms are different from Public Works Pit-Stop trailers."

>>

>> Thank you.

>>

>> Best regards,

>>

>> Joan Lubamersky

>> -----Original Message-----

>> From: Dan Harrington <dancingbear853@yahoo.com>

>> Sent: Friday, October 2, 2020 7:45 AM

>> To: Lubamersky, Joan (ADM) <joan.lubamersky@sfgov.org>

>> Subject: Re: Portable bathrooms

>>

>> Or now

>>

>> Sent from my iPhone

>>

>>>> On Oct 1, 2020, at 7:43 PM, Lubamersky, Joan (ADM) <joan.lubamersky@sfgov.org> wrote:

>>>>

>>>> Thank you Dan. Shall we talk at 9:15 tomorrow morning?

>>>> I could call you then or at a convenient time.

>>>>

>>> Joan
>>>
>>> Sent from my iPhone
>>>
>>>> On Oct 1, 2020, at 6:57 PM, Dan Harrington <dancingbear853@yahoo.com> wrote:
>>>>
>>>> Good evening Joan my phone number is 5109156427
>>>>
>>>> Sent from my iPhone
>>>>
>>>>> On Oct 1, 2020, at 4:04 PM, Lubamersky, Joan (ADM) <joan.lubamersky@sfgov.org> wrote:
>>>>>
>>>>> Hello Dan. Checking back. I misplaced your telephone number. Would you please send it to me?
>>>>>
>>>>> Thank you.
>>>>>
>>>>> Joan
>>>>>
>>>>> -----Original Message-----
>>>>> From: Dan Harrington <dancingbear853@yahoo.com>
>>>>> Sent: Thursday, October 1, 2020 11:22 AM
>>>>> To: Lubamersky, Joan (ADM) <joan.lubamersky@sfgov.org>
>>>>> Subject: Portable bathrooms
>>>>>
>>>>>
>>>>> This message is from outside the City email system. Do not open links or attachments from untrusted
sources.
>>>>>
>>>>>
>>>>>
>>>>> Good morning Joan I have some more answers regarding on the movement of the portable bathrooms and
what events we do I have you please give me a call on yesterday when you called and there was no phone number
for you so I only have your email so please or give me a call if you can also please send me your phone number to
reach you thank you Dan Harrington Teamsters Local eight 53
>>>>>
>>>>> Sent from my iPhone
>>>>
>>
>

Additional Attachment(s)

PERSONAL SERVICES CONTRACT SUMMARY ("PSC FORM 1")

Department: GENERAL SERVICES AGENCY - CITY ADMIN -- ADMDept. Code: ADMType of Request: ☒ Initial ☐ Modification of an existing PSC (PSC # _____)Type of Approval: ☐ Expedited ☒ Regular ☐ Annual ☐ Continuing ☐ (Omit Posting)Type of Service: Rental and cleaning of portable restroomsFunding Source: General FundPSC Duration: 3 yearsPSC Amount: \$1,500,000**1. Description of Work****A. Scope of Work/Services to be Contracted Out:**

Services will include as-needed rental and cleaning of portable restrooms for City use at City construction worksites and City-sponsored events. The number and type of portable restrooms will vary. The need for the equipment may last from a day to a month, or more. Portable restrooms would be delivered to the needed sites. Janitorial services are needed to keep the equipment clean and functioning. These services include cleaning the rented, portable restrooms and wash stations, replacement of soap and paper products, removal of waste from the holding tanks into a waste-receiving truck, and trucking the waste to a facility for proper disposal of the waste. The need for the services is unpredictable and depends on the number of worksites, users, and duration of the rental. For example, more portable restrooms would be required during summer months when more City constructions occur.

B. Explain why this service is necessary and the consequence of denial:

The consequences of denial would be that City employees working a City construction sites would not have access to restrooms. If cleaning was not provided, the restrooms would need to be removed daily, cleaned, and new restrooms delivered for use the next day. For City sponsored events, individuals and families with children would not have access to clean restrooms.

C. Has this service been provided in the past? If so, how? If the service was provided under a previous PSC, attach copy of the most recently approved PSC.

These services were provided through a term contract for the rental of portable restrooms. It has come to our attention that the janitorial services included in the rental of equipment should be brought to the Civil Services Commission for consideration.

D. Will the contract(s) be renewed?

If there is a demand for the service.

E. If this is a request for a new PSC in excess of five years, or if your request is to extend (modify) an existing PSC by another five years, please explain why.
not applicable**2. Reason(s) for the Request****A. Indicate all that apply (be specific and attach any relevant supporting documents):**

☒ Services required on an as-needed, intermittent, or periodic basis (e.g., peaks in workload).

☒ Services that require resources that the City lacks (e.g., office space, facilities or equipment with an operator).

B. Explain the qualifying circumstances:

Portable restrooms will be provided as needed. Services will include equipment and storage space the City lacks.

3. Description of Required Skills/Expertise

A. Specify required skills and/or expertise: Ability to drive trucks carrying the portable restrooms and supplies, unload the items onto the site, clean restrooms, remove waste into a hauling truck, and dispose of waste according to applicable health and safety standards.

- B. Which, if any, civil service class(es) normally perform(s) this work? 2708, Custodian; 2716, Custodial Assistant Supervisor; 2718, Custodial Supervisor; 2719, Janitorial Svcs Asst Sprv; 2720, Janitorial Services Supervisor; 7355, Truck Driver;
- C. Will contractor provide facilities and/or equipment not currently possessed by the City? If so, explain: Yes. Waste removal equipment and waste hauling truck as well as the rental of portable restrooms of different sizes and types, some with hand-washing stations, will be provided by contractor.

4. If applicable, what efforts has the department made to obtain these services through available resources within the City?

Other departments do not have access to portable restrooms and waste hauling vehicles.

5. Why Civil Service Employees Cannot Perform the Services to be Contracted Out

- A. Explain why civil service classes are not applicable.
The City does not own portable restrooms and storage facilities required as well as the equipment required for removal of waste. Cleaning and replacement of supplies is within the custodial classification series.
- B. If there is no civil service class that could perform the work, would it be practical and/or feasible to adopt a new civil service class to perform this work? Explain. No. Services are as needed and would require purchase, maintenance and storage of portable restrooms.

6. Additional Information

- A. Will the contractor directly supervise City and County employee? If so, please include an explanation.
No.
- B. Will the contractor train City and County employees and/or is there a transfer of knowledge component that will be included in the contract? If so, please explain what that will entail; if not, explain why not.
No. No training will be provided.
- C. Are there legal mandates requiring the use of contractual services?
No.
- D. Are there federal or state grant requirements regarding the use of contractual services? If so, please explain and include an excerpt or copy of any such applicable requirement.
No.
- E. Has a board or commission determined that contracting is the most effective way to provide this service? If so, please explain and include a copy of the board or commission action.
No.
- F. Will the proposed work be completed by a contractor that has a current PSC contract with your department? If so, please explain.
No.

7. Union Notification: On 03/07/2019, the Department notified the following employee organizations of this PSC/RFP request:
Bldg Mtl & Constr Teamsters, L 853; SEIU 1021 Miscellaneous

☐ I CERTIFY ON BEHALF OF THE DEPARTMENT THAT THE INFORMATION CONTAINED IN AND ATTACHED TO THIS FORM IS COMPLETE AND ACCURATE:

Name: Joan Lubamersky Phone: 4155544859 Email: joan.lubamersky@sfgov.org

Address: One Carlton B. Goodlett Place, Room 362 San Francisco, CA 95102

FOR DEPARTMENT OF HUMAN RESOURCES USE

PSC# 40301 - 18/19

DHR Analysis/Recommendation:

Commission Approval Required

action date: 06/03/2019

Approved by Civil Service Commission

06/03/2019 DHR Approved for 06/03/2019