Alabama Department of Transportation

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM PLAN

John R. Cooper, Transportation Director

PUB. (8/16)
ALABAMA DEPARTMENT OF TRANSPORTATION
COMPLIANCE AND BUSINESS OPPORTUNITIES BUREAU

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

POLICY STATEMENT

The Alabama Department of Transportation (ALDOT) has established a Disadvantaged Business Enterprise (DBE) Program in accordance with regulations of the United States Department of Transportation (USDOT), 49 CFR Part 26. The ALDOT has received federal financial assistance from the USDOT, and as a condition of receiving this assistance, the ALDOT has signed an assurance that it will comply with 49 CFR Part 26. It is the policy of the ALDOT to ensure that DBEs as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. It is also our policy:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;

2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;

3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;

4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;

5. To help remove barriers to the participation of DBEs in DOT assisted contracts;

6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities;

7. To assist the development of firms that can compete successfully in the market place outside the DBE Program; and

8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

As the Transportation Director, I have appointed Clarence H. Hampton, Equal Employment Opportunity Coordinator of the Compliance and Business Opportunities Bureau, as the ALDOT's DBE Liaison Officer (DBELO). In that capacity, the Equal Employment Opportunity Coordinator is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as
compliance with all other legal obligations incurred by ALDOT in its financial assistance agreements with the USDOT.

ALDOT has disseminated this policy statement to the Bureau Chiefs, Region Engineers and all of the components of our organization. This statement will also be distributed to the DBE and non-DBE business communities that perform work for us on USDOT-assisted contracts. The distribution will be accomplished by the following methods:

- Broadcasting the policy statement to all DBE and non-DBE firms via United States Postal Service and/or e-mail
- Publishing the policy on ALDOT’s DBE Program web site at http://www.dot.state.al.us/cboweb/DBE_Program.html

This policy statement applies to all contractors and consultants.

John R. Cooper, Transportation Director

Date 7/28/16
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Web Link to ALDOT Standards and Specification Section 111 DBE Contract Special Provisions
The ALDOT Disadvantaged Business Enterprise (DBE) Program applies to all types of firms – contractors and consultants. The primary objectives of the DBE Program are:

1. To ensure nondiscrimination in the award and administration of DOT-assisted contracts;
2. To create a level playing field on which DBEs can compete fairly for DOT-assisted contracts;
3. To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
4. To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
5. To help remove barriers to the participation of DBEs in DOT-assisted contracts;
6. To promote the use of DBEs in all types of federally-assisted contracts and procurement activities;
7. To assist the development of firms that can compete successfully in the marketplace outside the DBE Program; and
8. To provide appropriate flexibility to recipients of Federal financial assistance in establishing and providing opportunities for DBEs.

As a recipient of Federal funds, ALDOT is required to administer a DBE program in compliance with all laws, regulations, Executive Orders, and guidance.


The ALDOT is the recipient of federal airport funds authorized by 49 U.S.C. 47101, et seq.

SECTION 26.5 – DEFINITIONS

ALDOT will adopt the definitions for this program as well as relevant definitions and acronyms specific to our organization. These definitions are as follows:

**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 Metlaktla Indian Community), Eskimo, or Aleut blood, or a combination of those bloodlines. The term includes, in the absence of proof of a minimum blood quantum, any citizen whom 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.

**CPMS** means ALDOT’s Consolidated Project Management System which is used to track the status of projects and monies allocated.

**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—

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

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

**DOT-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.

**Unified Certification Program (UCP)** means the interagency organization that makes all certification decisions on behalf of FHWA, FAA, and FTA recipients. Certification decisions under the UCP are binding on all DOT recipients in Alabama.

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).

### SECTION 26.11 – RECORD KEEPING REQUIREMENTS

**Reporting to DOT: 26.11(a)**

As a recipient of Department of Transportation (DOT) funds ALDOT is expected to keep accurate data regarding the contracting opportunities available to firms paid for with DOT dollars. ALDOT will submit bi-annually the Uniform Report of DBE Awards/Commitments and Payments for the first half and second half of the fiscal year by the due dates and in the format included in 49 CFR Part 26, Appendix B. The reporting periods and due dates are as follows:

- Reporting period October 1 – March 31 is due on June 1
- Reporting period April 1 – September 30 is due on December 1

**Bidders List: 26.11(c)**

The ALDOT has created and maintains a bidders list, consisting of information about all DBE and non-DBE firms that bid or quote, whether successful or unsuccessful, on DOT-assisted contracts. ALDOT utilizes this list to provide us with the most accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on our DOT-assisted contracts for use in helping us set our overall goals.

Using, Form HR-DBE (See Attachment 2: HR-DBE Form), ALDOT collects the following information, from the bids or quotes, to maintain the bidders list: firm name, firm address, and firm’s status as a DBE or non-DBE.

All firms whose names are gathered by the above process will be queried by a survey to determine the following information: the age of the firm and the gross receipts of the firm.

ALDOT’s Compliance and Business Opportunities Bureau will update the bidder’s list in real time as the forms are submitted by the prime contractors.
Retention of Records: 26.11(d)

ALDOT will indefinitely maintain records documenting a DBE firm’s compliance with 49 CFR 26.11. At a minimum, ALDOT will keep complete application packages for each certified firm and all affidavits of no-change, change notices, and Home Office (On site) Reviews. These records will be retained in accordance with applicable record retention requirements for ALDOT’s financial assistance agreement. Other certification or compliance related records will be retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements for ALDOT’s financial assistance agreement, whichever is longer. To ensure its confidentiality, ALDOT will store these records in lateral file cabinets and/or storage facilities which shall remain locked at all times.

UCP Information to DOCR: 26.11(e)

ALDOT will report, on behalf of the Alabama Unified Certification Program (ALUCP), to the Departmental Office of Civil Rights (DOCR) under the Fast Act, or current authorizing legislation, by January 1st, 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.

ALDOT will use the required DOT report form without revision. The new form, which was adopted with the October 2, 2014 rule changes, was initially used by ALDOT for the June 1, 2015 report. The report template is located at https://www.transportation.gov/civil-rights/disadvantaged-business-enterprise/new-dbe-uniform-report.

SECTION 26.13 – ASSURANCES

The Transportation Director has signed the following assurances, applicable to all DOT-assisted contracts and their administration:

Assurance: 26.13(a)

ALDOT 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. ALDOT 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 ALDOT 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 ALDOT of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

This language will appear in financial assistance agreements with subrecipients.

**Contract Assurance & Sanctions: 26.13(b)**

ALDOT will ensure that the following clause is placed in every DOT-assisted contract it signs with a contractor and subcontract:

*The contractor, sub-recipient or subcontractor shall not discriminate on the basis of race, color, national origin, or sex in the performance of this contract. The contractor shall carry out applicable requirements of 49 CFR Part 26 in the award and administration of 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; and/or
3. Disqualifying the contractor from future bidding as non-responsible.

Subrecipients must similarly require that each DOT-assisted contract that is signed with a contractor (and each subcontract that the prime contractor signs with a subcontractor) includes the above assurances.
SUBPART B - ADMINISTRATIVE REQUIREMENTS

Section 26.21 – DBE PROGRAM REQUIREMENTS

ALDOT’s DBE Program Plan will be updated and approved by FHWA when there have been significant changes to the current approved Plan. ALDOT’s DBE Program Plan applies to all subrecipients, local public agencies, etc. who are award federally assisted contracts. All ALDOT subrecipients of FHWA funds must comply with ALDOT’s DBE Program Plan and may not have a plan independent from the ALDOT. ALDOT will continue to carry out your program until all funds from DOT financial assistance have been expended.

Section 26.23 – POLICY STATEMENT

ALDOT’s DBE Policy Statement applies to the ALDOT as well as its sub-recipients. It is disseminated each year department-wide, to sub-recipients, and to numerous minority and woman contractor associations along with general trade associations as a reminder of the ALDOT’s commitment to employing DBE firms on DOT-assisted projects. When updates are made to the DBE Program, notice is given to affected business units of the ALDOT and sub-recipients; information and training is provided as needed. The DBE Policy Statement is elaborated at the beginning of this concurrence document. It can also be found on the ALDOT website at www.dot.state.al.us →Doing Business →DBE Program →DBE Policy Statement.

Section 26.25 – DBE LIAISON OFFICER (DBELO)

ALDOT has designated its Equal Employment Opportunity Coordinator as its DBE Liaison Officer (DBELO):

Mr. Clarence H. Hampton
Equal Employment Opportunity Coordinator
Alabama Department of Transportation
Compliance and Business Opportunities Bureau
1409 Coliseum Boulevard, N-101
Montgomery, AL 36110
(334) 242-6659
hamptonc@dot.state.al.us

In this capacity, the Equal Employment Opportunity Coordinator or his designee is responsible for directing all aspects of the DBE Program and for ensuring that the Department complies with all provisions of Part 26. This includes ensuring adequate staff to administer the program in compliance with Part 26. The Equal Employment Opportunity Coordinator has direct, independent access to the Transportation Director concerning DBE Program matters (See
Attachment 3: ALDOT Organizational Chart). The Transportation Equal Employment DBE Unit Supervisor supports the DBE Liaison Officer in administering the DBE Program.

The Equal Employment Opportunity Coordinator and the Transportation Equal Employment DBE Unit Supervisor are responsible for administering and monitoring the DBE Program, in coordination with other appropriate personnel. Their duties and responsibilities include, but are not limited, to the following:

**Equal Employment Opportunity Coordinator:**

- Advising the Transportation Director regarding DBE matters and achievement.
- Setting ALDOT policy in accordance with federal and state regulations.
- Supervising and coordinates activities of DBE/Compliance program managers and technicians.
- Participating on ALDOT DBE Good Faith Efforts Committee and Minority Contracting Quality Liaison Committee.
- Establishing general direction for implementing policy.

**Transportation Equal Employment DBE Unit Supervisor:**

- Gathering and reporting statistical data and other information required by DOT.
- Working with various ALDOT bureaus to develop and submit the Department's FHWA and FTA DBE Methodologies and Goals.
- Managing ALDOT’s DBE Supportive Services Program.
- Administering the approved Small Business Element Program.
- Ensuring that bid notices and requests for proposals are available to DBEs/SBEs in a timely manner.
- Assisting in identifying contracting opportunities for DBEs/SBEs.
- Analyzing ALDOT’s progress toward goal attainment and identifying ways to improve progress.
- Advising the Equal Employment Opportunity Coordinator /DBE Liaison Officer on DBE matters.
- Working to resolve disputes between prime contractors and DBEs/SBEs.
- Providing DBEs/SBEs with information and assistance in preparing bids and obtaining bonding and insurance.

- Planning and participating in DBE/SBE training seminars, workshops, and networking sessions.

- Providing outreach to DBEs/SBEs and community organizations on how to do business with the ALDOT and to promote contracting opportunities.

- Certifying DBEs in accordance with the criteria set by DOT and acting as a liaison to the ALUCP.

- Assisting in maintaining and updating the statewide directory of certified ALUCP DBEs.

- Certifying SBEs in accordance with the criteria established by the ALDOT

- Maintaining and updating the statewide directory of certified SBEs

- Developing annual DBE supportive services work statement, request for proposal, and contract

The DBE Program is also administered by personnel within the following ALDOT bureaus: Office Engineer and Construction. Additional personnel with DBE responsibilities are assigned in the five (5) ALDOT Regions.

Section 26.27 – DBE FINANCIAL INSTITUTIONS

It is the policy of the ALDOT to investigate the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community, to make reasonable efforts to use these institutions, and to encourage prime contractors on DOT-assisted contract to make use of these institutions. To date, ALDOT has identified the following such institutions:

**Alamerica Bank**
Contact: W. Kent McGriff, SVP/CFO
2170 Highland Avenue South, Suite 150
Birmingham, AL 35205
Phone: 205-558-4600
Fax: 205-558-4616
E-mail: alamerica@alamericabank.com

**Commonwealth National Bank**
Contact: Tyrone Fenderson, Jr., President and CEO
Contact: Tracie Tate, Executive Assistant
2214 St. Stephens Road
Mobile, AL 36617
Phone: 251-476-5938
Fax: 251-479-9488
E-mail: ttate@ecommonwealthbank.org

ALDOT and its DBE Supportive Services providers encourages and promotes the use of these banks by consultants, contractors, and subrecipients.
Section 26.29 – PROMPT PAYMENT & RETURN OF RETAINAGE

The ALDOT will include in every DOT-assisted prime contract a prompt payment provision. ALDOT will require all Prime Contractors to include the same prompt payment provision in their subcontracts. ALDOT’s prompt payment provision, which applies to both DBE and non-DBE subcontractors, is as follows:

The Prime Contractor shall make payment to all subcontractors, for the portion of the work satisfactorily performed by the subcontractors, within 7 calendar days, not counting Saturdays and Sundays, of the Contractor's receipt of a partial payment from the ALDOT. The Prime Contractor shall submit to the Project Manager a notarized certification of payment signed by an authorized company representative, for each estimate period. This certification shall read “Company's Name paid all subcontractors active on the project for Estimate Period No. ____ within 7 calendar days, not counting Saturdays and Sundays, of the receipt of the partial payment covering said estimate period.” The certification shall be submitted within sixty calendar days of the close of the estimate period for which it applies. Failure to furnish the certification in a timely manner may result in the withholding of further monthly payments or other punitive action until the delinquent certifications have been submitted. Should an ALDOT audit reveal that the Contractor did not make payments as stated in the certification, ALDOT will take punitive action against the Contractor. This action may include, but is not limited to, withholding monthly progress payments, assessing sanctions, and/or disqualifying the contractor from future bidding as non-responsible.

ALDOT declines to hold retainage from prime contractors and prohibits prime contractors from holding retainage from subcontractors.

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 ALDOT. When ALDOT 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.

Any delay or postponement of payment from the above-referenced time frame may occur only for good cause following written approval of the ALDOT.

The ALDOT Construction Bureau is responsible for monitoring and enforcing the prompt payment process. In an effort to ensure compliance with the prompt payment provision, ALDOT requires the Project Manager to make a detailed review of the prime contractor’s payment records. This review shall include the contractor’s monthly estimate, a breakdown of the subcontractor’s pay items and monthly quantities, a copy of cancelled checks, and a copy of the notarized certification statement. This type of audit/review will be required for every six months of project life. The actual time of the review shall be determined at random by the Project Manager during the six month interval, and additional reviews may be directed, if necessary.
The Project Manager shall furnish a copy of all of payment compliance reviews to the Region Office. The Region Office shall forward any non-compliance findings to the Construction Bureau for review and further handling.

All prompt payment issues shall be directed, in writing, to the designated Project Manager of the DOT-assisted contract.

Section 26.31 – DIRECTORY

Under the Unified Certification Program (UCP), ALDOT maintains a directory identifying all firms eligible to participate as DBEs on DOT-assisted contracts. The directory lists the firm's name, address, phone number, fax number, e-mail, website, applicable NAICS codes, and the type of work the firm has been certified to perform as a DBE.

The Directory is published electronically and is located on the ALDOT website at [www.dot.state.al.us](http://www.dot.state.al.us) → ALUCP DBE List. The Directory is updated including additions, deletions, and other changes as they occur. The Directory’s functionality allows users to export, download, and save DBE contact reports, the entire directory, a specific firms’ information, or specific work categories into a PDF or Excel spreadsheet.

The Directory is made available, electronically, to all DBE and non-DBE prime contractors, subcontractors, consultants, sub-consultants, suppliers, vendors, manufacturers, regular dealers, county, city, and consulting engineers, tribal organizations, other minority and women’s interest groups, ALDOT staff, and other state and federal agencies.

Section 26.33 – OVERCONCENTRATION

ALDOT is not aware of overconcentration in any work area. However, any firm working for, or attempting to seek work with the ALDOT that feels its opportunity to participate in a federal aid contract has been unduly burdened because of an overconcentration of DBE firms in a specific type of work may file a complaint with the DBELO. The complaint must be submitted in writing and include examples of how the firm’s opportunity to obtain work has been impaired, and the name(s) of DBE firms that have affected their ability to obtain work with the ALDOT. The ALDOT will review all pertinent records, and, if necessary, solicit additional information from other contractors and DBE firms to determine if the burden is a result of overconcentration. Any determination of overconcentration and subsequent remedy will be reviewed and approved by FHWA or FTA to ensure that changes do not result in disparate treatment.

Should a determination be made that there are too many DBEs in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in this type of work; the ALDOT will devise appropriate measures to address this overconcentration. Once the appropriate measures have been determined they will be forwarded to the relevant USDOT modal for approval.
ALDOT has established a Mentor-Protégé Program and Business Development Program (See Attachment 4: Mentor Protégé Program). The Mentor-Protégé Program encourages the growth of DBE firms by allowing them to move into nontraditional areas of work. The Federal Highway Administration (FHWA), Alabama Division has approved ALDOT’s program. The movement of DBE firms into non-traditional areas of work through training from the mentor (prime contractor) serves to enhance the business proficiency and contract opportunities for DBE firms. The following statements provide criteria which was satisfied prior to FHWA approving procedures to select protégé firms (current DBEs certified with ALDOT) for placement into an approved Mentor-Protégé Program:

1. To operate a Mentor Protégé Program, ALDOT gained the approval of the FHWA.

2. Any Mentor Protégé relationship shall be based on a written development plan, approved by the recipient (ALDOT), 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.

3. To be eligible for reimbursement, the mentor’s services provided and associated costs must be directly attributable and properly allowable to specific individual contracts.

4. DBEs involved in a Mentor Protégé agreement must be independent business entities which meet the requirements for certification as defined by subpart D of 49 CFR part 26. 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.

The ALDOT also supports a comprehensive Business Development Program (BDP) that is made available to a limited number of DBE firms that are selected based on criteria including the firm’s commitment to the program. The BDP assists these firms in developing a comprehensive business plan, which:

1. Provides an analysis of the participating DBE’s market potential, the competitive environment, and other business analysis capable of estimating the prospects for profitable operation during the term of participation in and after graduation from the program.

2. Provides an analysis of the firm’s strengths and weaknesses, with particular attention to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts for work that historically has not been performed by DBEs.
3. Sets specific targets, objectives, and goals for the business development of the participant DBE during their participation in the BDP.

4. Provides estimates of contract awards from the DBE Program and from other sources needed to meet the objectives and goals for the period covered by the BDP.

5. Includes a transition management plan that prepares the firm for graduation from the program when specified criteria are met.

**Section 26.37 – MONITORING AND ENFORCEMENT MECHANISMS**

The ALDOT will put in place the following monitoring and enforcement mechanisms to ensure compliance with 49 CFR Part 26:

ALDOT will bring to the attention of the Department of Transportation any false, fraudulent, or dishonest conduct in connection with the program, so that DOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the DOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 26.107.

ALDOT will consider similar action under our own legal authorities, including responsibility determinations in future contracts, and any other legal and contract remedies available to ALDOT in the event of non-compliance with the DBE regulation and related provisions by a participant in ALDOT procurement opportunities.

ALDOT utilizes a Commercially Useful Function interview to review contracting records and monitor project worksites, to certify that work committed to DBEs at contract award or subsequently is actually performed by DBEs.

ALDOT currently has a Running Tally type report in its DBE Status Summary by Contract and Vendors Report. This report is kept in the DBE-10 database of our CPMS system, and is based on the DBE-10 data submitted monthly by the Prime Contractor to the Project Manager. The Project Manager will review and then forward to the Area Construction Engineer, who has the data entered by his/her staff or the Area EEO Coordinator. Due to the nature of the process, sometimes, the data is slow to be entered into the system. ALDOT will emphasize the need for timely submittal and data entry so that area personnel can regularly monitor the status of the DBE participation and the Prime Contractor’s progress towards meeting the contract DBE goal.

ALDOT will keep a running tally of actual payments to DBE firms for work committed to them at the time of contract award that is updated as payments occur allowing reports to be exported at any time.
Section 26.39 – FOSTERING SMALL BUSINESS PARTICIPATION

ALDOT has established a Small Business Element (SBE) Program 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.

ALDOT’s SBE Program is a race-neutral small business set-aside for prime contracts under 400,000.00. To qualify as a SBE, the firm’s average annual gross revenue (as defined by 13 CFR 121.402) over the three previous fiscal years, shall not exceed 23.98 million, and the firm must be a pre-qualified prime contractor with ALDOT.
SUBPART C - GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 26.45 – OVERALL GOALS

In accordance with Section 26.45(f), the ALDOT will submit its overall goal to DOT on August 1 at three-year intervals, based on a schedule established by the FHWA.

ALDOT’s current FHWA overall goal for FFYs 2016 through 2018 is 12.72% (0.92% race-neutral and 11.8% race-conscious). For legal sufficiency approval, ALDOT is not required to submit another overall goal methodology to FHWA until August 1, 2018.

A description of the FHWA methodology to calculate the overall goal and the goal calculations can be found on ALDOT’s website at http://www.dot.state.al.us/cboweb/DBEProgram.html

ALDOT’s current FTA overall goal for FFYs 2017 through 2019 is 1.8% (race-neutral). For legal sufficiency approval, ALDOT is not required to submit another overall goal methodology to FHWA until August 1, 2019.

A description of the FTA methodology to calculate the overall goal and the goal calculations can be found on ALDOT’s website at https://www.dot.state.al.us/ltweb/transit/index.html.

This section of the program will be updated annually.

Section 26.47 – SHORTFALL ANALYSIS

If ALDOT, in any given year, falls short of its goal, a shortfall analysis will be submitted to the relevant USDOT modal program.

1. ALDOT cannot be penalized or treated by the USDOT as being in noncompliance with the 49 CFR Part 26 because ALDOT’s DBE participation falls short of the overall goal set by ALDOT unless:
   a) ALDOT has failed to implement and administer the DBE program in good faith;
   b) ALDOT does not have an approved DBE program; or
   c) ALDOT does not have an overall DBE goal.

2. If the awards and commitments shown on ALDOT’s 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, ALDOT will do the following in order to be regarded by the Department as implementing its DBE program in good faith:
a) Analyze in detail the reasons for the difference between the overall goal and awards and commitments in that fiscal year;

b) Establish specific steps and milestones to correct the problems ALDOT identifies in its analysis and to enable it to meet fully its goal for the new fiscal year;

c) ALDOT will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under paragraphs (2)(a) and (b) of this section to the appropriate OA for approval. If the OA approves the report, ALDOT will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

3. The OA may impose conditions on ALDOT as part of its approval of ALDOT’s analysis and corrective actions including, but not limited to, modifications to its overall goal methodology, changes in its race-conscious/race-neutral split, or the introduction of additional race-neutral or race-conscious measures.

4. ALDOT may be regarded as being in noncompliance with 49 CFR Part 26 and therefore subject to the remedies in 49 CFR 26.103 or 26.105 and other applicable regulations, for failing to implement its DBE Program in good faith if any of the following things occur:

   a) ALDOT did not submit its analysis and corrective actions to the OA in a timely manner as required under paragraph (c)(3) of this section;

   b) The OA disapproves ALDOT’s analysis or corrective actions; or

   c) ALDOT does not fully implement the corrective actions to which it has committed or conditions that the OA has imposed following review of ALDOT’s analysis and corrective actions.

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

Section 26.51 – CONTRACT GOALS

The ALDOT will use contract goals to meet any portion of the overall goal ALDOT does not project being able to meet using race-neutral means. Contract goals are established so that, over the period to which the overall goal applies, they will cumulatively result in meeting any portion of our overall goal that is not projected to be met through the use of race-neutral means.

ALDOT will establish contract goals only on those DOT-assisted contracts that have subcontracting possibilities. ALDOT need not establish a contract goal on every such contract,
and the size of contract goals will be adapted to the circumstances of each such contract (e.g., type and location of work, availability of DBEs to perform the particular type of work.)

ALDOT will express our contract goals as a percentage of total amount of a DOT-assisted contract.

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**Section 26.53 – GOOD FAITH EFFORTS (GFE)**

When ALDOT has established a DBE contract goal, we will award the contract only to a bidder/offeror who makes good faith efforts to meet it. ALDOT will 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, ALDOT will not deny award of the contract on the basis that the bidder/offeror failed to meet the goal. See 49 CFR Part 26, Appendix A for guidance in determining the adequacy of bidder/offeror good faith efforts.

**Information to be submitted (26.53(b))**

In ALDOT's proposals/solicitations for DOT-assisted contracts for which a contract goal has been established, all bidders or offerors will be required to submit the following information no later than seven (7) days (reduced to five (5) days beginning January 1, 2017) after bid opening as a matter of responsibility:

1. The names and addresses of DBE firms that will participate in the contract;

2. A description of the work that each DBE will perform. 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;

3. The dollar amount of the participation of each DBE firm participating;

4. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and

5. 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.

6. 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
The ALDOT Office Engineer Bureau will ensure that all information is complete, consistent, and adequately demonstrates the low bidder’s good faith efforts before the contact is awarded. ALDOT treats bidders’ compliance with good faith effort requirements under sealed bid procedures as a matter of responsibility (See Attachment 5: Form OE-110).

**Administrative Reconsideration - 26.53(d)**

Within fifteen (15) days of being informed by ALDOT that it is not responsible because it has not documented sufficient good faith efforts, a bidder/offeror may request administrative reconsideration. Bidder/offerors should make this request in writing to the following reconsideration official: Chief Engineer Don Arkle, ALDOT Administrative Offices, 1409 Coliseum Boulevard, Montgomery, AL 36110. The reconsideration official will not have played any role in the original determination that the bidder/offeror did not document sufficient good faith efforts.

As part of this reconsideration, the bidder/offeror will 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. The bidder/offeror will have the opportunity to meet in person with our reconsideration official to discuss the issue of whether it met the goal or made adequate good faith efforts to do. ALDOT will 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. The result of the reconsideration process is not administratively appealable to the Department of Transportation.

**Good Faith Efforts – DBE Termination/Substitution and Replacement - 26.53(f-g)**

ALDOT will include in each prime contract a provision stating the following:

1. 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 ALDOT's written consent; and

2. That, unless ALDOT has consented, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

3. ALDOT will provide such written consent only if it agrees, for reasons stated in our concurrence document, that the prime contractor has good cause to terminate the DBE firm.

For purposes of this paragraph, good cause includes the following circumstances:

1. The listed DBE subcontractor fails or refuses to execute a written contract;

2. The listed DBE subcontractor fails or refuses to perform the work of its subcontract in a way consistent with normal industry standards. Provided, however, that good cause does
not exist if the failure or refusal of the DBE subcontractor to perform its work on the subcontract results from the bad faith or discriminatory action of the prime contractor;

3. The listed DBE subcontractor fails or refuses to meet the prime contractor's reasonable, nondiscriminatory bond requirements.

4. The listed DBE subcontractor becomes bankrupt, insolvent, or exhibits credit unworthiness;

5. The listed DBE subcontractor is ineligible to work on public works projects because of suspension and debarment proceedings pursuant to 2 CFR Parts 180, 215 and 1,200 or applicable state law;

6. ALDOT has determined that the listed DBE subcontractor is not a responsible contractor;

7. The listed DBE subcontractor voluntarily withdraws from the project and provides to you written notice of its withdrawal;

8. The listed DBE is ineligible to receive DBE credit for the type of work required;

9. A DBE owner dies or becomes disabled with the result that the listed DBE contractor is unable to complete its work on the contract;

10. Other documented good cause that ALDOT determines compels the termination of the DBE subcontractor. Provided, that good cause does not exist if the prime contractor seeks to terminate a DBE it relied upon to obtain the contract 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.

Before transmitting to the ALDOT Construction Bureau 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 ALDOT Construction Bureau via the Project Manager on the DOT-assisted contract, of its intent to request to terminate and/or substitute, and the reason for the request.

The prime contractor must give the DBE five (5) days to respond to the prime contractor's notice and advise the ALDOT Construction Bureau and the contractor of the reasons, if any, why it objects to the proposed termination of its subcontract and why ALDOT should not approve the prime contractor's action. If required in a particular case as a matter of public necessity (e.g., safety), ALDOT may provide a response period shorter than five (5) days. The ALDOT Construction Bureau will notify the DBELO all termination/substitution requests made by prime contractors regarding DBE firms.

In addition to post-award terminations, the provisions of this section apply to pre-award deletions of or substitutions for DBE firms put forward by offerors in negotiated procurements.
When a DBE subcontractor is terminated as provided in this section, or fails to complete its work on the contract for any reason, ALDOT will 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 ALDOT requests documentation under this provision, the contractor shall submit the documentation within seven (7) days, which may be extended for an additional seven (7) days if necessary at the request of the contractor, and ALDOT shall provide a written determination to the contractor stating whether or not good faith efforts have been demonstrated.

ALDOT will 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.

ALDOT will apply the requirements of this section to DBE bidders/offерors for prime contracts. In determining whether a DBE bidder/offерor for a prime contract has met a contract goal, ALDOT will 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.

**Good Faith Efforts – Prime –subcontractor information availability - 26.53(j)**

ALDOT will 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 49 CFR Part 26.53(j).


**Section 26.55 – COUNTING DBE PARTICIPATION**

ALDOT will count DBE participation toward overall and contract goals as provided in 49 CFR Part 26.55.

1. ALDOT considers all DBEs to be underutilized DBEs. Therefore, ALDOT will count all DBE participation toward its overall and contract goals.

2. When a DBE participates in a contract, ALDOT will count toward DBE goals only the value of the work actually performed by the DBE.

   a) ALDOT will count the entire amount of that portion of a construction contract (or other contract not covered by paragraph (2)(b) of this section) that is performed by the DBE’s own forces. ALDOT will 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).

b) ALDOT will 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 contract, toward DBE goals, provided ALDOT determines the fee to be reasonable and not excessive as compared with fees customarily allowed for similar services.

c) When a DBE subcontracted 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 will not count toward DBE goals.

3. When a DBE performs as a participant in a joint venture, ALDOT will 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.

4. ALDOT will count expenditures to a DBE contractor toward DBE goals only if the DBE is performing a commercially useful function on that contract. 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.

5. 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.

6. 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.

7. 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.
8. When a DBE is presumed not to be performing a commercially useful function as provided in paragraph 7 of this section, the DBE may present evidence to rebut this presumption. ALDOT may determine that the firm is performing a commercially useful function given the type of work involved and normal industry practices. ALDOT’s decisions on commercially useful function matters are subject to review by FHWA, FTA and FAA, but are not administratively appealable to DOT.

9. ALDOT will use the following factors in determining whether a DBE trucking company is performing a commercially useful function:

   a) 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;

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

   c) 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;

   d) 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; and

   e) The DBE may also lease trucks from a non-DBE firm, including an owner-operator. The DBE who leases trucks from a non-DBE is entitled to credit only for the fee or commission it receives as a result of the lease arrangement. The DBE does not receive credit for the total value of the transportation services provided by the lessee, since these services are not provided by a DBE.

   NOTE: ALDOT has not chosen to adopt the option of “one-for-one” counting allowed by 49 CFR 26.55(d).

   For purposes of this section, 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.

10. Only work performed by DBEs in the work code(s) for which they are certified on the DBE Directory shall count toward the goals.

   a) If the contractor is a DBE, the eligibility of the work shall be based upon its certification status at the time of the performance of the work.
b) For a DBE subcontractor, subconsultant, or supplier, the eligibility of the work shall be based upon the certified work codes of the DBE upon approval of the subcontract.

11. ALDOT will count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

   a) If the materials or supplies are obtained from a DBE manufacturer, ALDOT will count 100 percent of the cost of the materials or supplies toward DBE goals;

      i. For purposes of this section, 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;

   b) If the materials or supplies are purchased from a DBE regular dealer, ALDOT will count 60 percent of the cost of the materials or supplies toward DBE goals.

      i. 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.

      ii. To be a regular dealer, the firm must be an established, regular business

      iii. that engages, as its principal business and under its own name, in the purchase and sale or lease of the products in question.

      iv. 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.

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

12. Trucking contracts performed by DBE firms shall count toward the goals as follows:

   a) The DBE trucking firm shall receive credit for all transportation services performed with its own trucks and employees and/or DBE lessees;

   b) The DBE trucking firm will not receive credit for any work performed by non-DBE lessees; and
c) Where a DBE trucking firm acts as a broker it shall only receive credit for its fees and services in accordance with 49 CFR 26.55(a)(2) provided it is certified as a broker on the DBE Directory.

With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, ALDOT will 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 ALDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. ALDOT will not count any portion of the cost of the materials and supplies themselves toward DBE goals, however.

13. 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, ALDOT will not count the firm’s participation toward any DBE goals, except as provided for in 49 CFR 26.87(i).

14. ALDOT will not count the dollar value of work performed under a contract with a firm after it has ceased to be certified toward ALDOT overall goal.

15. ALDOT will 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
SUBPART D – CERTIFICATION STANDARDS

ALDOT, a member of the ALUCP, will use the certification standards of Subpart D of 49 CFR Part 26 to determine the eligibility of firms to participate as DBEs on DOT-assisted contracts. To be certified as a DBE, a firm must meet all certification eligibility standards. ALDOT will make its certification decisions based on the facts as a whole.

For detailed information on applying for certification, the certification process, and certification standards, firms may contact ALDOT Transportation Equal Employment (DBE) Unit Supervisor or they may contact any certifying participant in the ALUCP by visiting www.dot.state.al.us →Doing Business →ALUCP DBE List.

The ALDOT DBE Program can be contacted at:

Mr. John Huffman
Transportation Equal Employment (DBE) Unit Supervisor
Alabama Department of Transportation
Compliance and Business Opportunities Bureau
Disadvantaged Business Enterprise (DBE) Program
1110 John Overton Drive
Montgomery, AL 36110
(334) 353-6471 or 1-800-269-5081

ALDOT’s certification application forms and documentation requirements are found by visiting www.dot.state.al.us →Doing Business →ALUCP DBE List and in Attachment 6: Certification Application Forms of this document.

Section 26.61 – BURDENS OF PROOF

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

2. The firm seeking certification has the burden of demonstrating to the ALUCP, by a preponderance of the evidence, that it meets the requirements of this subpart concerning social disadvantage, business size, ownership, and control.

3. The ALUCP will rebuttably presume that members of the designated groups identified in 49 CFR Part 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to the ALUCP 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 49 CFR Part 26.67(a). Applicants do have the obligation to provide ALDOT with information concerning their economic disadvantage (see 49 CFR 26.67).
4. The ALUCP will make determinations concerning whether individuals and firms have met their burden of demonstrating ownership, control, and social and economic disadvantage by considering all the facts in the record, viewed as a whole.

Section 26.63 – GROUP MEMBERSHIP

1. If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see 49 CFR 26.61(c)), the ALUCP has a well-founded reason to question the individual’s claim of membership in that group, the ALUCP will require the individual to present additional evidence that he or she is a member of the group.

2. The ALUCP will provide the individual a written explanation of its reasons for questioning his or her group membership and a written request for additional evidence as outlined in paragraph (4) of this section.

3. In implementing this section, the ALUCP will take special care to ensure that it does not impose a disproportionate burden on members of any particular designated group. Imposing a disproportionate burden on members of a particular group could violate 49 CFR 26.7(b) and/or Title VI of the Civil Rights Act of 1964 and 49 CFR Part 21.

4. In determining a group membership classification, the ALUCP will consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. The ALUCP may require the applicant to produce appropriate documentation of group membership.

Note: The ALUCP will require all individuals claiming the Native American group membership to provide a tribal roll card as proof that they are members of a federally or state recognized tribe.

5. If there is a determination that an applicant claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the applicant will be required to demonstrate social and economic disadvantage on an individual basis.

6. The ALUCP's decisions concerning membership classifications are subject to the certification appeals procedure of 49 CFR Part 26.89.

Section 26.65 – BUSINESS SIZE DETERMINATIONS

1. To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. The ALUCP will 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.

2. Even if it meets the requirements of paragraph (1) 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. USDOT adjusts this amount for inflation from time to time.

**Section 26.67 – DETERMINATION OF SOCIAL & ECONOMIC DISADVANTAGE**

1. Presumption of disadvantage:

   The ALUCP will 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. The ALUCP will require applicants to submit a signed, notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.

   The ALUCP will 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.

   a) The ALUCP will 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 49 CFR Part 26, 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.

   b) In determining an individual's net worth, The ALUCP will observe the following requirements:

      i. Exclude an individual's ownership interest in the applicant firm;

      ii. 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. The ALUCP will 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.
iii. Do not use a contingent liability to reduce an individual's net worth.

iv. 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.

v. Notwithstanding any provision of Federal or State law, the ALUCP will not release an individual's personal net worth statement nor any documents pertaining to it to any third party without the written consent of the submitter. Provided, the ALUCP 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.

2. Rebuttal of presumption of disadvantage:

An individual's presumption of economic disadvantage may be rebutted in two ways. If the statement of personal net worth and supporting documentation that an individual submits under this section shows that the individual's personal net worth exceeds $1.32 million, the individual's presumption of economic disadvantage is rebutted. The ALUCP is not required to have a proceeding in order to rebut the presumption of economic disadvantage in this case.

Example: 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 ALUCP 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.

If the statement of personal net worth and supporting documentation that an individual submits demonstrates that the individual is able to accumulate substantial wealth, the individual's presumption of economic disadvantage is rebutted. In making this determination, as certifying agencies, the ALUCP may consider factors that include, but are not limited to, the following:

a) Whether the average adjusted gross income of the owner over the most recent three year period exceeds $350,000;

b) Whether the income was unusual and not likely to occur in the future;

c) Whether the earnings were offset by losses;

d) Whether the income was reinvested in the firm or used to pay taxes arising in the normal course of operations by the firm;
e) Other evidence that income is not indicative of lack of economic disadvantage; and

f) Whether the total fair market value of the owner's assets exceed $6 million.

The ALUCP must have a proceeding in order to rebut the presumption of economic disadvantage in this case.

3. If the ALUCP has a reasonable basis to believe that an individual who is a member of one of the designated groups is not, in fact, socially and/or economically disadvantaged the ALUCP may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. The ALUCP's proceeding will follow the procedures of 49 CFR Part 26.87.

In such a proceeding, the ALUCP has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. The ALUCP 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.

Transfers within two years: Except as set forth in paragraph 5 of this section, the ALUCP will 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.

The ALUCP 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.

5. 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. The ALUCP will 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, the ALUCP will use the guidance found in 49 CFR Part 26, Appendix E. The ALUCP will require that applicants provide sufficient information to permit determinations under the guidance of 49 CFR Part 26, Appendix E.

Section 26.69 – DETERMINATION OF OWNERSHIP

1. 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.

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

3. 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.

4. 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.
5. 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.

6. 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:*

a) 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.

b) 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 49 CFR Part 26.69(c)(1).

c) 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.

7. 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—

a) 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

b) 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.

c) 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.

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

a) 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.

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

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

a) 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

b) Through inheritance, or otherwise because of the death of the former owner.

8. The ALUCP will presume as not being held by a socially and economically disadvantaged individual, for purposes of determining ownership, all interests in a business or other assets obtained by the individual as the result of a gift, or transfer without adequate consideration, from any non-disadvantaged individual or non-DBE firm who is:

a) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;

b) Involved in the same or a similar line of business; or
c) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

9. To overcome this presumption and permit the interests or assets to be counted, the disadvantaged individual must demonstrate to the ALUCP, by clear and convincing evidence, that:

   a) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and

   b) 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.

10. The ALUCP will apply the following rules in situations in which marital assets form a basis for ownership of a firm:

   a) 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, the ALUCP will deem the ownership interest in the firm to have been acquired by that spouse with his or her own individual resources, provided that the other spouse irrevocably renounces and transfers all rights in the ownership interest in the manner sanctioned by the laws of the state in which either spouse or the firm is domiciled. The ALUCP does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.

   b) 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.

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

   a) 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 8 of this section.

   b) 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

   c) 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, the ALUCP will give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

Section 26.71 – DETERMINATION OF CONTROL

1. In determining whether socially and economically disadvantaged owners control a firm, the ALUCP will consider all the facts in the record, viewed as a whole.

2. 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.

   a) In determining whether a potential DBE is an independent business, the ALUCP will scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.

   b) The ALUCP will consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.

   c) The ALUCP will examine the firm’s relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.

   d) In considering factors related to the independence of a potential DBE firm, the ALUCP will consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.

3. A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR 26.69(j)(2).

4. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
a) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).

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

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

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

6. 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.

7. 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.

8. 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, the ALUCP will not deny certification solely on the ground that the person lacks the license or credential. However, the ALUCP 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.

9. The ALUCP 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. The ALUCP 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.

10. In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, the ALUCP 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.

11. 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.

12. 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.

   a) Except as otherwise provided in this paragraph, the ALUCP will make a judgment about the control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as the ALUCP does in other situations, without regard to whether or not the other persons are immediate family members.

   b) If the ALUCP 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.
13. Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, the disadvantaged individual now owning the firm must demonstrate to the ALUCP, by clear and convincing evidence, that:

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

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

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

15. The ALUCP is committed to assigning the NAICS code that most narrowly describes the work the disadvantaged owner is able to control and the work that the firm performs or intends to perform on federally-assisted. The ALUCP will grant certification to a firm only for specific types of work in which the socially and economically disadvantaged owners have the ability to control the firm. To become certified in an additional type of work, the firm need demonstrate to the ALUCP only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. The ALUCP may not, in this situation, require that the firm be recertified or submit a new application for certification, but the ALUCP will verify the disadvantaged owner’s control of the firm in the additional type of work.

a) The types of work a firm can perform (whether on initial certification or when a new type of work is added) shall be described via work codes that include the most specific available NAICS code for that type of work with an additional three digit extension.

b) Firms and the ALUCP must check carefully to make sure that the work codes are kept up-to-date and accurately reflect work which the ALUCP has determined the firm’s owners can control. The firm bears the burden of providing detailed company information the ALUCP needs to make an appropriate work code designation.
c) If a firm believes that there is not a work 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 ALUCP, in its certification documentation, supplement the assigned code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified. A vague, general, or confusing description is not sufficient for this purpose, and the ALUCP will not rely on such a description in determining whether a firm’s participation can be counted toward DBE goals.

d) The ALUCP is not precluded from changing a certification classification or description if there is a factual basis in the record. However, the ALUCP will not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification action.

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

17. 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.

18. 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.
Section 26.73 – OTHER RULES AFFECTING CERTIFICATION

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 2 of this section, the ALUCP will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.

2. The ALUCP 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.

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

4. The ALUCP will not refuse to certify a firm solely on the basis that it is a newly formed firm, has not completed projects or contracts at the time of its application, has not yet realized profits from its activities, or has not demonstrated a potential for success. If the firm meets disadvantaged, size, ownership, and control requirements of 49 CFR Part 26, the firm is eligible for certification.

5. DBE firms and firms seeking DBE certification shall cooperate fully with the ALUCP 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.

6. 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.

7. 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.

   a) 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, the ALUCP 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.
b) The ALUCP 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 the ALUCP 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, the ALUCP will not 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 the ALUCP will not certify the subsidiary.

EXAMPLE 6: The holding company, in addition to the subsidiary seeking certification, owns several other companies. The combined gross receipts of the holding companies and its subsidiaries are greater than the size standard for the subsidiary seeking certification and/or the gross receipts cap of 49 CFR 26.65(b). Under the rules concerning affiliation, the subsidiary fails to meet the size standard and cannot be certified.

9. 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.

10. The ALUCP will not require a DBE firm to be prequalified as a condition for certification unless the ALUCP requires all firms that participate in its contracts and subcontracts to be prequalified.
11. A firm that is owned by an Indian tribe or Native Hawaiian organization, rather than by Indians or Native Hawaiians as individuals, may be eligible for certification. Such a firm must meet the size standards of 49 CFR 26.35. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in 49 CFR Part 26.71.

12. The ALUCP will apply the following special rules to the certification of Alaska Native Corporations (ANCs).

a) 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.

b) As a recipient to whom an ANC-related entity applies for certification, the ALUCP will not use the DOT uniform application form (see Appendix F of 49 CFR Part 26). The ALUCP will obtain from the firm documentation sufficient to demonstrate that the entity meets the requirements of paragraph 12(a). The ALUCP will also obtain sufficient information about the firm to allow it to administer its program (e.g., information that would appear in your DBE Directory).

c) If an ANC-related firm does not meet all the conditions of paragraph 12(a) of this section, then it must meet the requirements of paragraph 11 of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.
SUBPART E - CERTIFICATION PROCEDURES

Section 26.81 – UNIFIED CERTIFICATION PROGRAMS

The ALDOT, a member of the ALUCP, has established a Unified Certification Program between and among DOT recipients in the State of Alabama. The ALUCP received approval of the agreement from DOT on August 10, 2010. The ALUCP meets all of the requirements of 49 CFR Part 26, Section 26.81 (See Attachment 7: Alabama UCP Agreement). The ALDOT will provide program oversight for the ALUCP. Certifying agencies in the ALUCP are as follows:

Alabama Department of Transportation (ALDOT)
Compliance and Business Opportunities Bureau
Disadvantaged Business Enterprise Program
1110 John Overton Drive
Montgomery, AL 36110
334-354-6471
www.dot.state.al.us

Birmingham Airport Authority (BAA)
Disadvantaged Business Enterprise Program
5900 Airport Highway
Birmingham, AL 35212
205-595-0533
www.flybirmingham.com

Huntsville-Madison County Airport Authority (HMCAA)
Disadvantaged Business Enterprise Program
1000 Glenn Hearn Blvd.
Box 20008
Huntsville, AL 35824
256-258-1973
www.hsvairport.com

Alabama State Port Authority (ASPA)
Environmental & Program Management
PO Box 1588
Mobile, AL 36633
251-441-7082
www.asdd.com

The WAVE Transit Systems (WAVE)
110 Beauregard Street, Suite 104
Mobile, AL 36602
251-344-6600 Ext. 225
www.thewavetransit.com
The ALUCP utilizes the DOT’s Uniform Certification Application and is structured so that a DBE applicant can submit its application to any certifying participant. However, upon receipt by a given certifying participant, the application will either be handled internally or forwarded to another certifying participant where a backlog or geographic considerations make it more cost efficient for another certifying participant to evaluate the application. The certifying agencies make all certification decisions on behalf of all DOT recipients in the Alabama.

Once a DBE applicant has been certified by any certifying participant, all other DOT recipients within the State of Alabama will recognize the certification. This comports with the “one-stop shopping” component of Part 26, Section 26.81, and ensures that a prospective DBE applicant will need to apply only once for a DBE certification that will be honored by all recipients.

Out-of-state firms seeking DBE certification in Alabama must first be DBE certified in their home state. The ALUCP has not formed regional reciprocity with other states at this time. See Section 26.85 for additional details.

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**Section 26.83 – PROCEDURES FOR MAKING CERTIFICATION DECISIONS**

The ALUCP will ensure that only firms certified as eligible DBEs under this section participate as DBEs in your program.

The ALUCP will determine the eligibility of firms as DBEs consistent with the standards of subpart D of this part. The ALUCP will take all the following steps in determining whether a DBE firm meets the standards of subpart D of this part:

1. 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;

   a) 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

   b) Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank account signature cards;

   c) Determine the work history of the firm, including contracts it has received, work it has completed; and payroll records;

   d) 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.
e) 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;

f) 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.

g) Require potential DBEs to complete and submit an appropriate application form, except as otherwise provided in 26.85 of this part.

2. The ALUCP will use the application form provided in 49 CFR Part 26, Appendix F to this part without change or revision. However, the ALUCP may provide in its 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. The ALUCP 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. The ALUCP must review all information on the form prior to making a decision about the eligibility of the firm. The ALUCP may request clarification of information contained in the application at any time in the application process.

5. 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.

6. Subject to the approval of the concerned operating administration as part of the DBE program, the ALUCP may impose a reasonable application fee for certification. Fee waivers shall be made in appropriate cases. The ALUCP does not charge a application fee.

7. The ALUCP will 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.

8. Once the ALUCP has 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.
9. The ALUCP 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 1 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 our attention that leads us to question the firm's eligibility, the ALUCP may conduct an on-site review on an unannounced basis, at the firm's offices and job sites.

10. DBEs must inform the ALUCP 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. Changes in management responsibility among members of a limited liability company are covered by this requirement. The DBE must attach supporting documentation describing in detail the nature of such changes. In addition, 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).

11. If you are a DBE, you must provide to the ALUCP, 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 1 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).

12. The ALUCP will make decisions on applications for certification within 90 days of receiving from the applicant firm all information required under this part. The ALUCP 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. The ALUCP may establish a different time frame in its DBE program, upon a showing that this time frame is not feasible, and subject to the approval of the concerned operating administration. The ALUCPs 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.

13. The ALUCP, will advise each applicant within 30 days from its receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.
14. Except as otherwise provided in this paragraph, if an applicant for DBE certification withdraws its application before the ALUCP has issued a decision on the application, the applicant can resubmit the application at any time. The ALUCP will not apply the waiting period provided under 26.86(c) of this part before allowing the applicant to resubmit its application. However, the ALUCP may place the reapplication at the “end of the line,” behind other applications that have been made since the firm's previous application was withdrawn. The ALUCP 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.

Section 26.85 – INTERSTATE CERTIFICATION

The ALUCP will not treat Interstate Certification as new certifications.

1. When a firm currently certified in its home state (“State A”) applies to Alabama for DBE certification, the ALUCP may, at its discretion, accept State A's certification and certify the firm, without further procedures. To obtain certification in this manner, the firm must provide to the ALUCP a copy of its certification notice from State A. Before certifying the firm, the ALUCP must confirm that the firm has a current valid certification from State A. The ALUCP can do so by reviewing State A’s electronic directory or obtaining written confirmation from State A.

2. In any situation in which Alabama chooses not to accept State A's certification of a firm as provided in paragraph 1 of this section, the applicant firm must provide the following information.

   a) 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.

   b) 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.

   c) 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.

   d) 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.

3. The ALUCP will determine whether there is good cause to believe that State A's certification of the firm is erroneous or should not apply in Alabama. Reasons for making such a determination may include the following:

   a) Evidence that State A's certification was obtained by fraud;

   b) New information, not available to State A at the time of its certification, showing that the firm does not meet all eligibility criteria;

   c) State A's certification was factually erroneous or was inconsistent with the requirements of this part;

   d) The State law of Alabama requires a result different from that of the State law of State A.

   e) The information provided by the applicant firm did not meet the requirements of paragraph 2 of this section.

4. If the ALUCP determines that there is good cause to believe that State A's certification is erroneous or should not apply in Alabama, it will, no later than 60 days from the date on which it received from the applicant firm all the information required by paragraph 2 of this section, send to the applicant firm a notice that it is certified and place the firm on your directory of certified firms.

5. If the ALUCP determines that there is good cause to believe that State A's certification is erroneous or should not apply in Alabama, it will, no later than 60 days from the date on which it received from the applicant firm all the information required by paragraph 2 of this section, send to the applicant firm a notice stating the reasons for your determination. The notice will state with particularity the specific reasons why the Alabama UCP 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 Alabama with respect to these reasons.

6. The firm may elect to respond in writing, to request an in-person meeting with the ALUCP decision maker to discuss the ALUCP's objections to the firm's eligibility, or both. If the firm
requests a meeting, as the ALUCP will schedule the meeting to take place within 30 days of receiving the firm's request.

7. 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 the ALUCP's notice. The firm is not otherwise responsible for further demonstrating its eligibility to State B.

8. The decision maker for the ALUCP will be an individual who is thoroughly familiar with the provisions of this Part concerning certification.

9. The ALUCP will issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later. The firm's application for certification is stayed pending the outcome of this process. A decision under this paragraph may be appealed to the Departmental Office of Civil Rights under 49 CFR Part 26.89 of this part.

Section 26.86 – DENIAL OF INITIAL REQUESTS FOR CERTIFICATION

When a firm’s request for DBE certification is denied, the ALUCP will 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.

If the ALUCP denies a firm's application or decertify it, it may not reapply until six (6) months have passed from our action.

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

Section 26.87 – REMOVAL OF A DBE'S ELIGIBILITY

In the event the ALUCP proposes to remove a DBE's certification, the ALUCP will follow procedures consistent with 49 CFR Part 26.87. To ensure separation of functions in a decertification, we have determined that the ALUCP DBE Hearing Board will serve as the decision-maker in decertification proceedings. The ALUCP have established an administrative "firewall" to ensure that the ALUCP DBE Hearing Board will not have participated in any way in the decertification proceeding against the firm (including in the decision to initiate such a proceeding).
Section 26.88 – SUMMARY SUSPENSION OF CERTIFICATION

The ALUCP shall immediately suspend a DBE’s certification if an owner whose ownership and control of the firm are necessary to the firm’s certification dies or is incarcerated. The ALUCP may immediately suspend a DBE’s certification where there is adequate evidence that there has been a material change in circumstances that may affect the firm’s DBE eligibility or when the firm fails to notify the ALUCP of a material change in circumstances or fails to file an annual Affidavit of No Change.

The suspension notice will be drafted by the ALUCP certifying participant and will be communicated to the firm immediately. The suspension takes effect when the DBE receives or is deemed to have received the notice. Following receipt of a notice suspension, a DBE that believes it is no longer eligible for the program may voluntarily withdraw from the program. If the DBE believes that its eligibility should be reinstated, it must provide to the ALUCP information demonstrating its eligibility. The ALUCP, within 30 days of receiving this information, must either lift the suspension and reinstate the DBE’s certification or commence a hearing under 49 CFR Part 26.87.

Section 26.89 – CERTIFICATION APPEALS TO THE DOT

Any firm denied certification or whose eligibility has been removed may appeal to DOT. Such appeals are sent to:

United States Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Ave, S.E.
Washington, DC 20590
Phone: 202-366-4648
Fax: 202-366-5575
TTY/Assistive Device: 202-366-9696

Section 26.91 – CERTIFICATION APPEAL DECISIONS

Certification appeal decisions affecting the eligibility of DBEs are promptly implemented as required by Part 26.

If DOT determines the ALUCP erroneously certified a firm as a DBE, the firm’s DBE status will be removed, effective on the date of receipt of DOT’s decision.

If DOT determines the ALUCP erroneously failed to find reasonable cause to remove a firm’s eligibility, the ALUCP will expeditiously begin proceedings to determine whether the firm’s eligibility should be removed.
If DOT determines that the ALUCP erroneously declined to certify or removed the eligibility of a firm, the ALUCP will certify the firm, effective on the date of receipt of DOT’s decision.

If DOT determines that the ALUCP erroneously determined that the presumption of social and economic disadvantage either should or should not be deemed rebutted, the ALUCP will take the corrective action stipulated by DOT.

If DOT affirms the ALUCP’s determination, no further action will be taken.

All participants in the ALDOT’s DBE program will cooperate with compliance reviews.
SUBPART F – COMPLIANCE AND ENFORCEMENT

Section 26.109 – INFORMATION, COOPERATION, AND CONFIDENTIALITY

The ALUCP will comply with the provisions of this section found in 49 CFR Part 26 including not releasing any business information to third parties, maintaining confidentiality regarding complaints and ensuring no retaliation for anyone involved in the complaints. The ALDOT will cooperate fully and promptly with DOT, and OAs, in a complaint investigation, compliance review, or any inquiries in the ALDOT’s DBE program.
SUBPART G – 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.