



New Mexico DEPARTMENT OF
TRANSPORTATION
MOBILITY FOR EVERYONE

DISADVANTAGED BUSINESS ENTERPRISE PROGRAM MANUAL

NEW MEXICO DEPARTMENT OF TRANSPORTATION
CONSTRUCTION AND CIVIL RIGHTS BUREAU

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CHAPTER I – GENERAL

Section 1: Objectives

The New Mexico Department of Transportation (NMDOT) Disadvantaged Business Enterprise (DBE) Program implements the provisions of 49 CFR Part 26, other pertinent regulations, and source legislation. NMDOT seeks to achieve the following:

- A. To ensure nondiscrimination in the award and administration of USDOT-assisted contracts in USDOT's highway, transit, and airport financial assistance programs;
- B. To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
- C. To ensure that NMDOT's DBE program is narrowly tailored in accordance with applicable law;
- D. To ensure that only firms that fully meet the DBE Program eligibility standards specified in 49 CFR Part 26 are permitted to participate as DBEs;
- E. To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
- F. To promote the use of DBEs in all types of USDOT-assisted contracts and procurement activities conducted by recipients;
- G. To assist the development of firms that can compete successfully in the marketplace outside the DBE program; and
- H. To provide appropriate flexibility in establishing and providing opportunities for DBEs.

Ref: 49 CFR §26.1

Section 2: Application

- A. The New Mexico DBE Program applies to NMDOT and any recipient of any of the following types of funds:
 - 1) Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107. Titles I, III, and V of the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405;
 - 2) Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405; or

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

B. The DBE Program does not apply to the following types of contracts:

1) Any contract that is to be performed entirely outside the United States, its territories and possessions, Puerto Rico, Guam, or the Northern Marianas Islands.

C. If NMDOT lets a contract in which USDOT financial assistance does not participate, 49 CFR Part 26 does not apply to the contract.

Ref: 49 CFR §26.3

Section 3: Definitions and Terms

A. **Affiliation** has the same meaning the term has in the Small Business Administration regulations, 13 CFR Part 121. Except as provided in 13 CFR Part 121, concerns are affiliates of each other when, either directly or indirectly:

1) One concern controls or has the power to control the other; or

2) A third party or parties controls or has the power to control both; or

3) An identity of interest between or among parties exists such that affiliation may be found.

In determining whether affiliation exists, all appropriate factors will be considered, 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.

B. **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.

C. **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.).

D. **Asset(s)** means all 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.

E. **B2Gnow** (Business to Government now) is a web-based software program used to collect, verify and manage payment information for prime contractors and subcontractors working on federal-aid projects. Additionally, the software is used to collect and report Disadvantaged Business Enterprise (DBE) participation and utilization on federal-aid projects.

- F. **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.
- G. **Compliance** means that a recipient has correctly implemented the requirements of 49 CFR Part 26, this Manual, and other applicable requirements.
- H. **CCRB** means the Construction and Civil Rights Bureau of the New Mexico Department of Transportation.
- I. **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.
- J. **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 the purposes of this part, a lease is considered to be a contract.
- K. **Contract Goal** means the percentage of DBE participation established by NMDOT, if required, for a USDOT-Assisted Contract.
- L. **Contractor** means one who participates, through a contract or subcontract (at any tier), in a highway, transit, or airport program.
- M. **Department or USDOT** means the United States 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).
- N. **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. Similarly, in circumstances where the recipient's offices are closed for all or part of the last the day, the period extends to the next day on which the agency is open.
- O. **Design Consultant** (or other Consultants) means:
- 1) An individual, firm or partnership that contracts with NMDOT to provide services for engineering, surveying, environmental, hazardous materials, subsurface utility engineering, and other services which require a rigorous logical, science based approach for data acquisition to be used in the development of NMDOT highway construction plans.
 - 2) Other consultants include other providers of professional services receiving FHWA funding and FTA and FAA recipients receiving grants of \$250,000 or more in aggregate.
- P. **Disadvantaged Business Enterprise or DBE** means a for-profit small business concern:
- 1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and

- 2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.
- Q. **Good Faith Efforts (GFE)** means efforts to achieve a DBE goal or other requirement of the DBE Program which, by their scope, intensity and appropriateness to the objective, can reasonably be expected to fulfill the program requirements.
- R. **Home State** means the state in which a DBE firm or applicant for DBE certification maintains its principal place of business.
- S. **Immediate family member** means father, mother, husband, wife, son, daughter, brother, sister, grandmother, grandfather, mother-in-law, father-in-law, sister-in-law, brother-in-law, and domestic partner and civil unions recognized under New Mexico law.
- T. **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.
- U. **Joint Check** means a two-party check between a DBE, a prime contractor and the regular dealer of material/supplies.
- V. **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 is commensurate with its ownership interest.
- W. **Liabilities** mean financial or pecuniary obligations. This includes, but is not limited to, accounts payable, notes payable to bank or others, installments accounts, mortgages on real estate, and unpaid taxes.
- X. **NAICS (North American Industry Classification System)** replaces the Standard Industrial Classification Code (SIC) designation which best describes the primary business of a firm.
- Y. **Native Hawaiian** means any individual whose ancestors were natives, prior to 1778, of the area which now comprises the State of Hawaii.
- Z. **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.
- AA. **NMDOT** means the New Mexico Department of Transportation.
- BB. **Noncompliance** means that a recipient has not correctly implemented the requirements of 49 CFR Part 26, this Manual or other applicable requirements.

- CC. **Operating Administration or OA** means any of the following parts of USDOT: 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.
- DD. **Overall DBE Goal** means NMDOT's determination, calculated tri-annually, as a percentage of the level of DBE participation on New Mexico USDOT-assisted contracts that NMDOT expects absent the effects of discrimination.
- EE. **Overconcentration** means a condition in which DBE firms are being utilized in certain types of work to the extent that non-DBEs are unduly burdened from participating in the same type of work.
- FF. **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.
- GG. **Primary industry classification** means the North American Industry Classification System (NAICS) designation that best describes the primary business of a firm. The NAICS is described in the North American Industry Classification Manual—United States, 1997 which is available on the Internet at the U.S. Census Bureau Web site: <http://www.census.gov/eos/www/naics/>.
- HH. **Primary recipient** means a recipient that receives USDOT financial assistance and passes some or all of it on to another recipient.
- II. **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 business records are kept are in different locations, the recipient will determine the principal place of business.
- JJ. **Professional Services** means a Subcontractor that provides a specialized service requiring professional licensure by the State of New Mexico, e.g Professional Engineers, Professional Surveyors, and Attorneys.
- KK. **Program** means any undertaking on a recipient's part to use USDOT financial assistance, authorized by the laws to which 49 CFR Part 26 applies.
- LL. **Race-conscious measure or program** is one that is focused specifically on assisting only DBEs, including women-owned DBEs.
- MM. **Race-neutral measure or program** is one that is or can be used to assist all small businesses. Race-neutral includes gender-neutrality.
- NN. **Recipient** means any entity, public or private, to which USDOT 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.
- OO. **Responsible Bidder** means a bidder who submits a responsive bid and who has furnished, when required, information and data to prove that the bidder's financial resources, production or service

facilities, personnel, service reputations and experience are adequate to make satisfactory delivery of the services, construction or items of tangible personal property described in the invitation for bids.

- PP. **Responsible Offeror** means an offeror who submits a responsive proposal and who has furnished, when required, information and data to prove that the offeror's financial resources, production or service facilities, personnel, service reputations and experience are adequate to make satisfactory delivery of the services or items of tangible personal property described in the proposal.
- QQ. **Responsive Bid** means a bid which conforms in all material respects to the requirements set forth in the invitation for bids and the contract documents, including notice to contractors, special provisions, supplemental specifications, and addenda and which has not been rejected. Material respects of a bid include but are not limited to price, quality, quantity or delivery requirements. DBE related bid requirements, including accurate and timely submission of required forms, is a material component of a bid. Failure to comply with DBE related bid requirements shall render a bid non-responsive.
- RR. **Responsive Offer** means an offer which conforms in all material respects to the requirements set forth in the request for proposals. Material respects of a request for a proposal include, but are not limited to price, quality, quantity, or delivery requirements. DBE related RFP requirements, including accurate and timely submission of required forms, is a material component of an offer. Failure to comply with DBE related RFP requirements shall render an offer non-responsive.
- SS. **Secretary** means the Secretary of the United States Department of Transportation or his/her designee.
- TT. **Set-aside** means a contracting practice restricting eligibility for the competitive award of a contract, solely to DBE firms.
- UU. **Small Business Administration or SBA** means the United States Small Business Administration.
- VV. **SBA Certified Firm** refers to firms that have a current, valid certification from or recognized by the SBA under the 8(a) Business Development or Small Disadvantaged Business programs.
- WW. **Small Business or 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 gross receipts specified in §26.65(b).
- XX. **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. 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. The social disadvantage must stem from circumstances beyond the individual's control. Socially or economically disadvantages individuals may include:
- 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.
 - 2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged.

- a. **“Black Americans,”** which includes persons having origins in any of the Black racial groups of Africa;
- b. **“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;
- c. **“Native Americans,”** which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
- d. **“Asian-Pacific Americans,”** which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), the Republic of the Northern Marianas Islands, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
- e. **“Subcontinent Asian Americans,”** which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
- f. **“Women”,**
- g. Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.

YY. **Spouse** means a married person, including a person in a domestic partnership or a civil union recognized under New Mexico law.

ZZ. **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 vehicle solely for personal use and for sale “off the lot” are not considered transit vehicle manufacturers.

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

BBB. **Unified Certification Program (UCP)** means applicants are allowed to apply only once for a DBE certification that will be honored by all recipients in all states.

CCC. **USDOT** means United States Department of Transportation.

DDD. **USDOT-Assisted Contract** means any contract between a recipient and a contractor (at any tier) funded in whole or in part with USDOT financial assistance, including letters of credit or loan guarantees, except a contract solely for the purchase of land. USDOT-assisted, federally-assisted and federal-aid are terms used interchangeably.

Ref: 49 CFR §26.5

Section 4: Nondiscrimination

- A. NMDOT and all recipients of USDOT-assisted contracts shall not discriminate on the basis of race, color, national origin or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE Program or the requirements of 49 CFR Part 26. NMDOT and all recipients will further ensure that NMDOT and/or all recipients of USDOT-assisted contracts shall not discriminate in the development, implementation and administration of the DBE Program. Implementation of the DBE Program by NMDOT is a legal obligation and failure to carry out its terms shall be treated as a violation whereby sanctions may be imposed as provided under 49 CFR Part 26. The DBE Program is accorded the same priority as compliance with all other legal obligations incurred by NMDOT in its financial assistance agreements with USDOT.
- B. No person shall be excluded from participation in or denied the benefits of, or otherwise discriminated against in connection with the award and performance of any contract covered by this DBE Program or 49 CFR Part 26 on the basis of race, color, sex or national origin.
- C. In administering the DBE Program, NMDOT shall not use criteria or methods of administration that have the effect of defeating or substantially impairing accomplishment of the objectives of the program with respect to individuals of a particular race, color, sex, or national origin.

Ref: 49 CFR §26.7, 49 CFR §26.1

Section 5: USDOT Guidance and Interpretations

- A. Only guidance and interpretations (including interpretations set forth in certification appeal decisions) consistent with 49 CFR Part 26 and issued after March 4, 1999 have definitive, binding effect in implementing the provisions of NMDOT's DBE Program and constitute the official position of the USDOT.
- B. The Secretary of the USDOT, the Office of the Secretary of Transportation, FHWA, FTA, and FAA may issue written interpretations of or written guidance concerning 49 CFR Part 26. Written interpretations and guidance are valid and express the official positions and views of the USDOT or any of its operating administrations, only if they are issued over the signature of the Secretary of Transportation or if they contain the following statement: *The General Counsel of the Department of Transportation has reviewed this document and approved it as consistent with the language and intent of 49 CFR Part 26.*

Ref: 49 CFR §26.9

Section 6: Record Keeping and Reports

- A. NMDOT will transmit the Uniform Report of DBE Awards or Commitments and Payments to FHWA, FTA, and FAA, at the intervals specified in the form found in Appendix B of 49 CFR Part 26.
- B. The prime contractor or consultant shall keep such records as required by the NMDOT and as necessary, including all records set forth in this manual, to demonstrate compliance with its DBE utilization obligations.

- C. NMDOT will provide data about NMDOT's DBE program to the USDOT and will provide to USDOT updates of any significant changes in NMDOT's DBE Program as directed by USDOT operating administrations.
- D. As requested, the prime contractor or consultant will submit all subcontracts and other financial transaction documentation executed with DBEs in such form, manner and content as prescribed by NMDOT.
- E. All such records must be retained by the prime contractor or consultant for the applicable record retention period in the NMDOT's financial assistance agreement or at least three (3) years after project acceptance by FHWA following the completion of the contract whichever is longer. These records shall be available for inspection by NMDOT, FHWA, USDOT or other appropriately sanctioned New Mexico State Agencies or Federal Agencies or Departments.
- F. NMDOT must maintain records documenting affirm compliance with this Section. Specifically, NMDOT must keep a complete application package for each for each certified firm and all affidavits of no-change, change notices, and on-site reviews. These records and other certification or compliance related records must be retained for a minimum of seven (7) years unless otherwise provided by applicable record retention requirements for NMDOT's financial assistance agreement, whichever is longer.
- G. NMDOT shall create and maintain:
- 1) A bidders list to provide NMDOT as accurate data as possible about the universe of DBE and non-DBE contractors and subcontractors who seek to work on NMDOT's Federally-assisted contracts for use in helping NMDOT set the New Mexico overall DBE goal.
 - 2) A Participating Contractor or Consultant Annual Profile Registration list consisting of all firms bidding on prime construction and prime consultant design contracts and bidding or quoting as subcontractors or subconsultants on USDOT-assisted projects. For every firm, NMDOT shall triennially collect and maintain the following information:
 - a. Firm name
 - b. Firm address (including phone, fax, and email)
 - c. Firm's status as a DBE or non-DBE
 - d. The age of the firm
 - e. The annual gross receipts of the firm. NMDOT will obtain this information by asking each firm to indicate into what gross receipts bracket it fits (e.g., less than \$500,000; \$500,000 - \$1 million; \$1-2 million; \$2-5 million; etc.) rather than requesting the exact figure from the firm.
 - 3) NMDOT will use the Notice to Construction Contractors Bidders List of Quoters and Design or Other Consultant Offerors List of Quotes to determine the availability of DBE and non-DBE firms; and therefore the relative availability of ready, willing and able DBEs, for the purpose of establishing and monitoring NMDOT's overall goal.

- 4) NMDOT shall require all construction bidders to include the Bidders List of Quoters (Form: BL-DBE) in their bid package at the time of bid submittal. Failure to submit this form accurately and completely will render the bid non-responsive and the bid shall be rejected.
- 5) NMDOT shall require all design or other consultant offerors to submit the Design or Other consultant Offerors List of Quoters form No. A-1013 at the time of submittal of offeror or other consultant proposal. Failure to submit this form accurately and completely will render the offeror's or other consultant's proposal non-responsive.
- 6) NMDOT shall submit to the USDOT Office of Civil Rights on or before January 1 of each year, the percentage and location of DBE firms in the UCP Directory controlled by the following;
 - a. Women;
 - b. Socially and economically disadvantaged individuals (other than women); and
 - c. Individuals who are women and are otherwise socially and economically disadvantaged individuals.
- 7) NMDOT requires Contractors and Subcontractors at all tiers working on federal-aid projects shall use B2Gnow to report DBE information as required by the contract. Use of the B2Gnow software program is required and shall be considered incidental to the contract. Failure of a contractor, subcontractor, or other recipient to use the software program will result in NMDOT withholding a portion of future progress payments as a Non-Conformance until such time as compliance with these requirements is achieved.
- 8) NMDOT shall withhold monthly progress estimates when any recipient fails to submit any other required recordkeeping documents.

Ref: 49 CFR §26.11

Section 7: Assurance Statements

- A. Each financial assistance agreement NMDOT signs with a USDOT OA (or a primary recipient) will include the following assurance:

The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any USDOT-assisted contract or in the administration of its DBE program or the requirements of 49 CFR Part 26. NMDOT shall take all necessary and reasonable steps under 49 CFR Part 26 to ensure nondiscrimination in the award and administration of USDOT-assisted contracts. The NMDOT DBE program, as required by 49 CFR Part 26 and as approved by USDOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, the Department may impose sanctions as provided for under 49 CFR Part 26 and may, in appropriate cases, refer the matter for enforcement under 18 U.S.C. 1001 and/or the Program Fraud Civil Remedies Act of 1986 (31 U.S.C. 3801 et seq.).

- B. Each contract NMDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) will include the following assurance:

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

- 1) Withholding of monthly progress payments;
- 2) Assessing sanctions;
- 3) Liquidated damages; and/or
- 4) Disqualifying the contractor from future bidding as non- responsible.

Ref: 49 CFR §26.13

CHAPTER II – ADMINISTRATIVE REQUIREMENTS

Section 1: Who must have a DBE Program

- A. As NMDOT receives funds from the following operating administrations and lets USDOT-assisted contracts, NMDOT must have a DBE program meeting the requirements of 49 CFR Part 26:
- 1) FHWA primary recipients receiving funds authorized by a statute to which 49 CFR Part 26 applies;
 - 2) FTA recipients receiving planning, capital and/or operating assistance who will award prime contracts (excluding transit vehicle purchases) the cumulative total value of which exceeds \$250,000 in FTA funds in a Federal fiscal year; or
 - 3) FAA recipients receiving grants for airport planning or development who will award prime contracts the cumulative total value of which exceeds \$250,000 in FAA funds in a Federal fiscal year.
- B. NMDOT is eligible to receive USDOT financial assistance because USDOT has approved NMDOT's DBE Program and NMDOT is in compliance with it and 49 CFR Part 26. NMDOT will continue to carry out its DBE Program until all funds from USDOT financial assistance have been expended. NMDOT will submit significant changes in the program to the operating administration for approval.

49 CFR §26.21

Section 2: Policy Statement

- A. NMDOT issued a Policy Statement, which complies with the requirements of 49 CFR §26.23.
- B. A copy the Policy Statement is found in Appendix "A" of this Manual.
- C. NMDOT circulates the Policy Statement throughout the organization and to the DBE and non-DBE business communities that perform work on USDOT-assisted contracts. The Policy Statement also resides on the NMDOT external website at: <http://dot.statc.nm.us/content/dam/nmdot/OEOP/Policy-Statement.pdf>

Ref: 49 CFR §26.23

Section 3: DBE Liaison Officer

- A. The Secretary of NMDOT designates the Compliance Manager of the Construction and Civil Rights Bureau as the DBE Liaison Officer. The DBE Liaison Officer is responsible for implementing all aspects for the DBE program and ensuring that NMDOT complies with all provisions of 49 CFR Part 26. The DBE Liaison Officer has direct, independent access to the Secretary of NMDOT concerning DBE program matters.
- B. The duties and responsibilities of the DBE Liaison Officer include the following:
- 1) Gather and report statistical data and other information required by USDOT;

- 2) Review third party contracts and purchase requisitions for compliance with the DBE program;
- 3) Work with appropriate internal and external entities to set overall DBE goals;
- 4) Ensure that bid notices and requests for proposals are available to DBEs in a timely manner;
- 5) Identify contracts and procurements so that DBE goals are included in solicitations (both race-neutral methods and contract specific goals attainment) and identify ways to improve progress;
- 6) Analyze NMDOT progress toward goal attainment and identify ways to improve progress;
- 7) Participate in pre-bid meetings;
- 8) Advise the NMDOT Cabinet Secretary and State Transportation Commission on DBE matters and achievements;
- 9) Provide DBEs with information and assistance in preparing bids, obtaining bonding and obtaining insurance;
- 10) Plan and participate in DBE training seminars;
- 11) Provide outreach to DBEs and community organizations to advise them of opportunities; and
- 12) Maintain the NMDOT's updated directory of certified DBEs.

Ref: 49 CFR §26.25

Section 4: DBE Financial Institutions

- A. NMDOT investigates the full extent of services offered by financial institutions owned and controlled by socially and economically disadvantaged individuals in the community.
- B. NMDOT annually updates, through the assistance of the New Mexico Department of Regulation and Licensing (Financial Institution Division), a listing of financial institutions owned and controlled by socially and economically disadvantaged individuals.
- C. The listing of financial institutions owned and controlled by socially and economically disadvantaged individuals and the services those institutions provide is displayed on the NMDOT external website
- D. NMDOT makes every reasonable effort to identify and encourage prime contractors to use such institutions where possible.

Ref: 49 CFR §26.27

Section 5: Prompt Payment and Retainage

- A. NMDOT requires prime contractors to pay subcontractors for satisfactory performance of their contracts no later than seven (7) Days from receipt of each payment NMDOT makes to the prime contractor (New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction, Section 108.1). Monitoring of prompt payment is done through the B2Gnow payment reporting and confirmation function. The following describes the Prompt Payment monitoring process:
- 1) Each month, NMDOT Project Office staff reviews payment dates in B2Gnow, entered by the prime contractors.
 - 2) If a subcontractor indicates in B2Gnow they were not paid within seven (7) Days, NMDOT Project Office staff shall review and verify the payment dates in B2Gnow both from NMDOT to the Prime Contractor and the Prime Contractor to the subcontractor are compliant with Prompt Payment provisions.
 - 3) If the Prime Contractor's payment to the subcontractor is more than seven (7) Days, the NMDOT Project Office staff requests the Prime Contractor to provide evidence the Prime Contractor paid the subcontractor within seven (7) Days or provide justification as to why the Prime Contractor did not pay the Subcontractor within the required the required time period.
 - 4) If the Prime Contractor does not submit to NMDOT verification of Prompt Payment or justification for late or nonpayment to the Subcontractor, or if the Prime Contractor's submission does not demonstrate compliance or justification for noncompliance; the NMDOT shall notify the Prime Contractor they are in nonconformance with their NMDOT contract. This nonconformance may affect the Prime Contractor's Prequalification Performance Factor.
- B. NMDOT ensures prompt and full payment of retainage from the prime contractor to the subcontractor within 30 Days after the subcontractor's work is satisfactorily completed and accepted by the NMDOT. To comply with this requirement, NMDOT may hold retainage from prime contractors and provide for prompt and regular incremental acceptances of portions of the prime contract, pay retainage to prime contractors based on these acceptances, and require a contract clause obligating the prime contractor to pay all retainage owed to the subcontractor for satisfactory completion of the accepted work within 30 days after NMDOT makes payment to the prime contractor.
- C. For purposes of this section, a subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished, accepted and documented as required by the recipient. When a recipient has made an incremental acceptance of a portion of a prime contract, the work of a subcontractor covered by that acceptance is deemed to be satisfactorily completed.
- D. Any delay or postponement of payment among the parties may take place only for good cause, with the prior written approval of NMDOT. Noncompliance with this section shall be handled in accordance with the compliance procedures found in Chapter III, Section 10 of this Manual.

Ref: 49 CFR §26.29

Section 6: DBE Directory

- A. NMDOT maintains and makes available to interested persons a real-time directory identifying all firms eligible to participate as DBEs in the NMDOT DBE Program and includes the firm's name, address, telephone number and the type(s) of work that the firm is certified to perform as a DBE.

- B. The directory is available online at:
<https://nmdot.dbesystem.com/FrontEnd/VendorSearchPublic.asp?TN=nmdot&XID=4599>.

Ref: 49 CFR §26.31

Section 7: Overconcentration

- A. If NMDOT deems overconcentration in a type of work to exist, NMDOT will devise measures to address the overconcentration. These measures may include the use of incentives, technical assistance, business development programs, mentor-protégé programs and other appropriate measures.
- B. If NMDOT determines that DBE firms are so over concentrated in a certain type of work as to unduly burden the opportunity of non-DBE firms to participate in that type of work, such determination, and the proposed measures to address the determination, shall be approved by FHWA prior to implementation of the proposed remedial measures.

Ref: 49 CFR §26.33

Section 8: Business Development Programs

- A. NMDOT follows the requirement of 49 CFR §26.35 which requires establishing a DBE business development program (BDP) to assist firms in gaining the ability to compete successfully in the marketplace outside the DBE program. A DBE firm, as a condition of receiving assistance through the BDP, too agree to terminate its participation in the DBE program after a certain time has passed or certain objective have been reached. Refer to Appendix “H” for guidance on administering BDP programs.
- B. As part of the BDP or separately, NMDOT may establish a “mentor-protégé” program, in which another DBE or non-DBE firm is the principal source of business development assistance to a DBE firm,
- 1) Only firms you have certified as DBEs before they are proposed for participation in a mentor-protégé program are eligible to participate in the mentor-protégé program.
 - 2) During the course of the mentor-protégé relationship, NMDOT must:
 - a. Not award DBE credit to a non-DNE mentor firm for using its own protégé firm for more than one half of its goal on any Contract performed by the protégé firm.
 - b. Not award DBE credit to a non-DBE mentor form for using its own protégé firm for more than every other Contract performed by the protégé firm.
 - 3) For purposes of making determinations of business size under this part, NMDOT must not treat protégé firms as affiliates of mentor firms, when both firms are participating under an approved mentor-protégé program. See Appendix H of this Program Manual for guidance concerning the operation of mentor-protégé programs.

Ref: 49 CFR §26.35

Section 9: Monitoring and Enforcement Mechanisms

- A. NMDOT follows the requirements of 49 CFR Part 26 and requires inclusion of the DBE clauses in all agreements and contracts with recipients of the Federally-assisted agreements. NMDOT shall enter into an agreement with all recipients which will bind such recipients to the requirements of the DBE Program. Appropriate NMDOT personnel shall coordinate the monitoring and enforcement of the DBE Program with all recipients including contractors, consultants, municipalities, airports or other program areas.
- B. NMDOT will bring to the attention of USDOT any false, fraudulent, or dishonest conduct in connection with the program so that USDOT can take the steps (e.g. referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) provided in 49 CFR §26.109.
- C. NMDOT will consider similar action under its own legal authorities, including responsibility determinations in future contracts, and any other legal and contract remedies available to NMDOT in the event of non-compliance with the DBE regulation and related provisions by a participant in NMDOT procurement activities.
- D. NMDOT 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. (See Appendix “B” of this Manual.)
- E. B2Gnow provides a running tally of actual DBE attainments (e.g., payments actually made to DBE firms), including a means of comparing these attainments to commitments. B2Gnow also provides reports that display both commitments and attainments.

Ref: 49 CFR §26.37

Section 10: Fostering Small Business Participation

- A. NMDOT fosters participation of small businesses, as defined in Section 3, Paragraph PP, of this manual, in its contracts to facilitate competition by small business concerns on FHWA, FTA and FAA funded projects, and takes reasonable steps as set forth in Paragraphs B through I of this Section to eliminate obstacles to their participation.
- B. The contact list for NMDOT’s outreach program to foster small business participation is compiled annually from 1) the NMDOT’s Bidders and Quoters list; 2) collaboration with statewide Small Business Development Centers and Chambers of Commerce, 3) data sources such as the Small Business Administration’s Dynamic Small Business Search; and 4) small businesses who directly contact NMDOT.
- C. NMDOT dedicates staff within its CCRB, including but not limited to a full-time DBE Supportive Services and Small Business Program Coordinator, as part of its outreach program for small business concerns. Needs assessments are conducted that, in turn, result in targeted formal training programs to enhance successful participation on NMDOT federally funded contracts. The substance of each training program is based, in part, on feedback garnered from the assessments. Training topics include

how to obtain bonding and financing; how to bid on a project; how to develop a business plan; how to better manage a business and how to best utilize emerging technologies. Statewide forums, conferences and other events are held to provide opportunities for small business owners to market themselves to and network with prime contractors.

- D. NMDOT includes the following in invitations to bid on federal-aid projects, “regardless of whether a DBE goal is set on a contract, and in accordance with NMSA 1978 Section 13-1-184, ‘Assistance to Small Business Policy,’ NMDOT encourages Contractors to use small businesses, including DBEs, on its projects.” Information on contract opportunities is widely available through postings on the NMDOT website, and outreach activities to further communicate contract opportunities include newsletters, email marketing, and individual counseling.
- E. NMDOT develops projects through the STIP process with the understanding that (1) the majority of New Mexico contractors are smaller companies, (2) the volume of Federal funds appropriated to New Mexico is not immense, and (3) the size of the state and the number of entities sharing the funds is considerable. For these reasons, NMDOT projects are generally developed with smaller scopes and, therefore, are considered unbundled. Accordingly, the NMDOT Highway and Bridge Construction Project Letting Program lets the majority of its FHWA funded contracts of a size that facilitates small business participation. This program will continue to develop and let projects in this way.
- F. The NMDOT Transit and Rail Project Letting Program lets the majority of its FTA funding that has contracting opportunities to subrecipients that are nonprofits, cities, counties, and municipalities, most of which do not award contracts. For those that do award contracts, the majority are of a size under \$100,000 that small businesses can reasonably perform.
- G. The NMDOT Airport Construction and Maintenance Letting Program lets the majority of its FAA funded contracts of a size that small businesses can reasonably perform at its two, small state-owned general aviation airports, Conchas Lake and Navajo Lake, each of which has one runway.
- H. NMDOT annually obtains information required in 49 CFR 26.11 through an Annual Profile Registration form that is mailed every three (3) years to all prior year bidders and quoters on NMDOT contracts. The returned form includes business size (annual gross receipts) information for bidders and quoters, which is in turn used to both identify small businesses as noted in Paragraph B of this section and to verify small business participation on federally-assisted contracts.
- I. NMDOT will annually review and revise, as appropriate, its DBE Program should participation of small businesses fall below 50% for subcontracts or 20% for prime contracts in any operating administration area.

CHAPTER III – GOALS, GOOD FAITH EFFORTS, AND COUNTING

Section 1: Role of Statutory 10% Goal

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

Ref: 49 CFR §26.41

Section 2: Use of Set-Asides or Quotas

- A. NMDOT does not use quotas in any way in the administration of the DBE program.
- B. NMDOT does not set-aside contracts for DBEs except in limited and extreme circumstances when no other method can reasonably be expected to redress egregious instances of discrimination.

Ref: 49 CFR §26.43

Section 3: Setting Overall State Goals

- A. NMDOT, in three year intervals on August 1, must submit to the relevant Operating Administration for approval, the overall DBE goal for the upcoming three years and the methodology used to establish the overall DBE goal.
- B. NMDOT, as a recipient of USDOT funds, is mandated by USDOT to establish an overall state goal for the utilization of DBEs on USDOT-assisted contracts. The state goal is expressed as a percentage of funds paid to DBE contractors, subcontractors or consultants versus payment of Federal-aid funds on NMDOT projects. The state goal is based on demonstrable evidence of the availability of ready, willing, and able DBEs relative to all businesses ready, willing, and able to participate on New Mexico USDOT-assisted contracts.
- C. USDOT requires a two-step process for setting the state DBE goal. The first step is to establish a base figure or the relative availability of DBEs. The second step is to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal.
- D. In setting the base figure, NMDOT will gather information with respect to the relative number of bids, quotes or offers submitted by DBEs on past USDOT-assisted prime contracts or subcontracts in one or more recent years. DBEs with current certification and "potential" DBEs will be counted as available

DBEs. NMDOT uses a bidders list to determine the number of DBEs that have bid or quoted (successful and unsuccessful) on DOT-assisted prime contracts or subcontracts in the past three years. This number determines the number of businesses that have bid or quoted (successful and unsuccessful) on prime or subcontracts in the same time period. The number of DBE bidders and quoters is divided by the number of all businesses to derive a base figure of the relative availability of DBEs in the market. An overall base figure will be determined by weighting DBE availability in these work segments by the amount of contract dollars going to each segment on past USDOT-assisted contracts.

E. After calculating a base figure, NMDOT will examine all of the evidence available in the jurisdiction to determine what adjustment, if any, is needed to the base figure in order to arrive at the overall goal.

1) Types of evidence that must be considered when adjusting the base figure include:

- a. The current capacity of DBEs to perform work in the New Mexico USDOT-assisted contracting program, as measured by the volume of work DBEs have performed in recent years;
- b. Evidence from disparity studies conducted within the jurisdiction, to the extent it is not already accounted for in the base figure.

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

- a. Statistical disparities in the ability of DBEs to get the financing, bonding and insurance required to participate in the NMDOT contracting program;
- b. Data on employment, self-employment, education, training and union apprenticeship programs, to the extent NMDOT can relate it to the opportunities for DBEs to perform in the NMDOT contracting program.

F. NMDOT will provide for consultation and publication in establishing the overall DBE goal. This includes:

1) Consultation with minority, women's and general contractor groups, community organizations, and other officials or organizations which could be expected to have information concerning the availability of disadvantaged and non-disadvantaged businesses, and the effects of discrimination on opportunities for DBEs. The consultation must include a scheduled, direct, interactive exchange (e.g. a face-to-face meeting, video conference, teleconference) with as many interested stakeholders as possible focused on obtaining information relevant to the goal setting process. This exchange must occur before the submission of the proposed DBE goal and methodology to the relevant Operating Administration for review. NMDOT must document the consultative process and feedback received in the DBE goal and methodology submission.

2) NMDOT publishes a notice announcing the proposed overall goal and methodology are available for inspection. The notice shall be posted on NMDOT's website (<http://dot.state.nm.us/>). If the proposed DBE goal changes following review, the revised DBE goal must be posted again at NMDOT's website. In addition, NMDOT shall make the proposed DBE goal and methodology available for inspection during normal business hours at the Construction and Civil Rights Bureau for a 30-day comment period. The notice of the comment period includes addresses to which

comments may be sent. The public comment period will not extend the August 1 deadline in the year goal submission is due.

Ref: 49 CFR §26.45

Section 4: Failure to Meet Overall State Goal

- A. NMDOT will exercise good faith efforts to achieve the state goal in compliance with 49 CFR Part 26. Whenever NMDOT cannot achieve its goal, NMDOT will not be penalized or treated by USDOT as being in noncompliance with 49 CFR Part 26 so long as NMDOT administers an approved DBE Program in good faith.
- B. If NMDOT does not meet or exceed the overall goal applicable to a fiscal year, it will analyze in detail the reasons for the difference between the overall goal and its awards and commitments in that fiscal year, and establish specific steps and milestones to correct the problems identified in its analysis to enable it to meet fully its goal for the new fiscal year.
- C. NMDOT will submit to FHWA, within 90 days of the end of the fiscal year, the analysis and corrective actions developed under this section for approval. If FHWA approves the report, the NMDOT will be regarded as complying with the requirements of this section for the remainder of the fiscal year.

Ref: 49 CFR §26.47

Section 5: Means to Meet Overall State Goals

- A. NMDOT meets the maximum feasible portion of the overall state goal by using race-neutral means of facilitating DBE participation. Race neutral DBE participation includes any time a DBE wins a prime contract through customary competitive procurement procedures or is awarded a subcontract on a prime contract that does not carry a DBE contract goal. Race-neutral measures may include arranging solicitations, times for presentations of bids, quantities, specification, and delivery schedules in ways that facilitate participation by DBEs and other small businesses and by making contracts more accessible to small businesses by means such as those provided by 49 CFR §26.39. Also, by providing assistance to overcoming limitations such as inability to obtain bonding or financing (e.g. by such means as simplifying the bonding process, reducing bonding requirements, eliminating the impact of surety costs from bids, and providing services to help DBEs and other small businesses, obtain bonding and financing). Other programs may be provided as well.
- B. Upon developing the overall state goal for DBE utilization on USDOT-assisted contracts, NMDOT will project, using the median of three (3) years DBE participation, the portion of the overall state goal that can be met by race-neutral measures. NMDOT will submit this projection and the basis for the projection to the relevant Operating Administration for approval.
- C. If NMDOT projects that DBE utilization will fall substantially short of meeting the overall state goal through race-neutral means alone, or if NMDOT monitoring of actual DBE utilization indicates that utilization will fall substantially short of the overall state goal, and good faith efforts have not been fulfilled, NMDOT may consider use of race-conscious measures.

- D. NMDOT will include the following factors in its consideration of whether race-conscious measures are needed: whether DBE utilization falls short of the overall state goal because of levels or types of USDOT-assisted contracts that were not anticipated when setting the overall state goal and, whether utilization falls short of the overall state goal because of clearly correctable deficiencies in the race-neutral measures implemented.
- E. Under 49 CFR Part 26, the principal race-conscious tool available for recipients is setting individual contract goals. Under 49 CFR Part 26, NMDOT may not institute a race-conscious quota program for USDOT-assisted contracts. NMDOT may implement a set-aside program, but only in those limited and extreme circumstances when no other method could be reasonably expected to redress egregious instances of discrimination.
- F. If, after race-conscious measures have been implemented, an analysis of DBE participation data indicates that NMDOT will meet the overall state goal, NMDOT will reduce or eliminate the use of contract goals as necessary to avoid exceeding the overall goal.

Ref: 49 CFR §26.51

Section 6: Project Goal Setting

- A. If NMDOT deems that race-conscious measures are required for a particular USDOT-assisted contract, NMDOT will establish a DBE goal for that contract. Contract goals will only be used for contracts that have subcontracting opportunities. Items to be considered in establishing the contract goal will include, but not be limited to, the type of work involved, the location of the work and the availability of the DBEs to perform that particular work.
- B. To be responsive, prime construction contractors bidding or prime design or other consultants submitting proposals on NMDOT invitations for bid or requests for proposals for which DBE contract goals have been set must either meet or exceed the goal or show good faith efforts to meet the goal.
- C. If NMDOT lets a master contract for “design build” or “turnkey” contract or similar legally binding instrument to a contractor or consultant, who in turn lets subsequent subcontracts for the work of the project, NMDOT may establish a DBE goal for the project. The master contractor or consultant then establishes DBE contract goals, as appropriate, for the subcontracts it lets. NMDOT shall maintain oversight of the master contractor’s or consultant’s activities to ensure that they are conducted consistent with the requirements of the NMDOT’s DBE Program and 49 CFR Part 26.

Ref: 49 CFR §26.51, 49 CFR §26.53

Section 7: Procedures to Meet Contract Goals

- A. When NMDOT has established a DBE contract goal, the contract shall be awarded only to a bidder/offeror that makes good faith efforts to meet it. NMDOT will determine that a bidder/offeror has made good faith efforts if the bidder/offeror does either of the following:
 - 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, the award must not be denied on the basis that the bidder/offeror failed to meet the goal. See Appendix "C" of this Manual for guidance in determining the adequacy of the bidder/offeror's good faith efforts.

B. In solicitations for USDOT-assisted contracts for which a DBE contract goal has been established, the following are required:

- 1) Award of the contract is conditioned on meeting the requirements of this section and failure to do so will render the bid non-responsive;
- 2) All bidders/offerors are required to submit the following information at the time provided in paragraph B(3) of this section as a matter of responsiveness;
 - a. The names and addresses of DBE firms that will participate in the contract;
 - b. A description of the work, including the NAICS codes, that each DBE will perform. To count toward meeting a goal, the DBE firm must be certified in a NAICS code applicable to the kind of work the firm would perform on the contract;
 - c. The dollar amount of the participation of each DBE firm participating;
 - d. Written documentation of the bidder/offeror's commitment to use a DBE subcontractor whose participation it submits to meet a contract goal; and
 - e. Written confirmation from the DBE that it is participating in the contract in the kind and amount of work provided in the prime contractor's commitment.
 - f. If the contract goal is not met, evidence of good faith efforts (see Appendix C" of this Manual). 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.
- 3) The bidder/offeror must provide the information required by paragraph B(2) of this section as follows:
 - a. The information required by paragraphs B(2)(a) through (d) shall be provided through submission of Form A-585A as part of the bid packet at the time the bid is submitted. Submissions should be made to the CCRB by:
 - Mail: 1570 Pacheco St. Suite A10
Santa Fe, NM 87505
 - Fax: (505) 476-0910
 - Email: Contact CCRB for the appropriate email contact at 1-800-544-0936
 - b. The information required by paragraph B(2)(e) shall be provided through submission of Form A-644 to the Construction and Civil Rights Bureau by 4:00 p.m. of the seventh calendar day after the bid opening. Submissions should be made to CCRB by:
 - Mail: 1570 Pacheco St. Suite A10
Santa Fe, NM 87505

- Fax: (505) 476-0910
 - Email: Contact CCRN for the appropriate email contact at 1-800-544-0936
- c. The information required by paragraph B(2)(f), if necessary, shall be provided to the Construction and Civil Rights Bureau by 4:00 p.m. of the seventh calendar day after the bid opening.
 - d. NMDOT shall make sure all information is complete and accurate and adequately documents the bidder/offeree's good faith efforts before committing itself to the performance of the contract by the bidder/offeree. This assurance shall be documented through a compliance notification issued by the Construction and Civil Rights Bureau.
- 4) If NMDOT determines that the apparent low bidder/offeree has failed to meet the requirements of paragraph A of this section, NMDOT will, before an award of the contract is made, provide the bidder/offeree, in writing, an opportunity for administrative reconsideration.
 - a. As part of this reconsideration, the bidder/offeree 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.
 - b. The NMDOT decision on reconsideration will be made by following the process defined in Section 103.3 of the New Mexico State Department of Transportation Standard Specifications for Highway and Bridge Construction. .
 - c. The bidder/offeree will be given the opportunity to meet in person with the NMDOT reconsideration official to discuss the issue of whether it met the goal or made adequate good faith to do so.
 - d. NMDOT will send the bidder/offeree 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.
 - e. The result of the reconsideration process is not administratively appealable to USDOT.

Ref: 49 CFR §26.53

Section 8: Termination/Substitution/Replacement of DBE Firms for Projects having Race-Conscious Measures

- A. The prime contractor shall not terminate for convenience a DBE subcontractor listed on Form A-585A and A-644 (or an approved substitute DBE firm) without the prior written consent of NMDOT. This includes, but is not limited to, instances in which a prime contractor seeks to perform work originally designated for a DBE subcontractor with its own forces or those of an affiliate, or with a non-DBE firm, or with a substitute DBE firm.
- B. NMDOT includes in each Contract a provision stating:
 - 1) 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 NMDOT's written consent as provided in Section 8 Paragraph A; and

- 2) Unless the NMDOT grants consent provided in Section 8 Paragraph A, the contractor shall not be entitled to payment for work or material unless it is performed or supplied by the listed DBE.
- C. NMDOT will provide written consent to the termination request only if NMDOT agrees, for reasons stated in its 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 consistent with normal industry standards, provided, however, that good cause does not exist if the failure or refusal to perform 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 or debarment proceedings pursuant to 26 CFR Parts 180, 215 or 1,200 or applicable state law;
 - 6) NMDOT has determined the listed DBE subcontractor is not a responsible contractor;
 - 7) The listed DBE subcontractor voluntarily withdraws from the project and provides to NMDOT written notice of its withdrawal;
 - 8) The listed DBE subcontractor 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 subcontractor is unable to complete its work on the project; or
 - 10) Other documented good cause that NMDOT 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 on to obtain the contract so that the prime contractor can self-perform the work for which the DBE subcontractor was engaged or so that the prime contractor can substitute another DBE or non-DBE contractor after contract award.
- D. The prime contractor shall, before transmitting to NMDOT its request to terminate or substitute a DBE subcontractor, give notice in writing to the DBE subcontractor, with a copy to NMDOT, of its intent to terminate and/or substitute, and the reason for the request.
- E. The prime contractor must give the DBE subcontractor 5 working days to respond to the prime contractor's notice and advise the prime contractor and NMDOT of the reasons, if any, why it objects to the proposed termination of its subcontract and why NMDOT should not approve the prime contractor's request.
- F. As soon as possible, after receipt and review of the DBE subcontractor's response, or after the expiration of the 5 working day response period, NMDOT shall provide a written response to the prime contractor's request. NMDOT may seek additional information as necessary to formulate its response. NMDOT's decision is not appealable to USDOT.

- G. If termination of the DBE subcontractor does not result in a DBE contract goal shortfall, NMDOT strongly encourages the prime contractor to make good faith efforts to subcontract with a substitute DBE firm which can perform the same type of work on the project as the terminated DBE firm or to subcontract with a replacement DBE firm which can perform other types of work remaining on the project.
- H. If termination of the DBE subcontractor results in a DBE contract goal shortfall, the prime contractor shall either:
- 1) Make good faith efforts to obtain sufficient DBE participation to meet the contract goal by subcontracting with a substitute DBE firm which can perform the same type of work on the project as the terminated DBE firm; or
 - 2) Make good faith efforts to obtain sufficient DBE participation to meet the contract goal by subcontracting with a replacement DBE firm which can perform other types of work remaining on the project.
- I. The prime contractor shall document its good faith efforts to find another certified DBE subcontractor to substitute for or replace the terminated DBE firm. See Appendix "C" of this Manual for guidance in determining the adequacy of good faith efforts. These good faith efforts shall be directed at finding another DBE firm 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. The good faith efforts shall be documented by the prime contractor. If NMDOT requests the documentation of the prime contractor's good faith efforts, the prime contractor shall submit the documentation within seven days, which may be extended for an additional seven days if necessary at the request of the contractor.
- J. The prime contractor shall, in writing, request approval from NMDOT to utilize a substitute or replacement DBE firm to meet the contract goal. In its request, the prime contractor shall detail the work items to be performed and the estimated dollar amount to be subcontracted. The prime contractor shall also include a notice, signed by the replacement DBE, of its intended participation or an amended A-644 form.
- K. As soon as possible, after receipt and review of the prime contractor's request, NMDOT shall provide a written response to the prime contractor regarding whether or not good faith efforts have been documented. NMDOT may seek additional information as necessary to formulate its response. NMDOT's decision is not appealable to USDOT.
- L. If the prime contractor is unable to secure a substitute or replacement DBE subcontractor to perform the work to meet the contract goal, the prime contractor shall immediately notify NMDOT in writing, and request to be relieved of meeting the contract goal. The prime contractor shall include with this request a justification, including the documented good faith efforts made to find another certified DBE firm.
- M. As soon as possible, after receipt and review of the prime contractor's request, NMDOT shall provide a written response to the prime contractor. NMDOT may seek additional information as necessary to formulate its response. NMDOT may allow a DBE contract goal waiver, adjust the DBE goal, or assess construction contract liquidated damages or design contract liquidated damages as may be appropriate, depending on the individual project's overall circumstances. NMDOT's decision to waive or adjust the contract goal is not appealable to USDOT.

- N. Failure of any contractor to abide by the provisions of this Section is a material breach of the contract and may result in the termination of the contract and the contractor shall be subject to the compliance procedures provided in Chapter III, Section 10 of this Manual.

Ref 49 CFR §26.53

Section 9: Compliance Procedures

Whenever NMDOT believes the construction contractor or any subcontractor or supplier on a USDOT-assisted contract may not be operating in compliance with the terms, conditions or requirements of this DBE Program, NMDOT will conduct an investigation. If it is found that the construction contractor or any subcontractor or supplier is not in compliance with the DBE Program, NMDOT will notify the non-compliant party in writing. NMDOT may conduct a compliance conference with the non-compliant party or parties to discuss the area(s) of non-compliance. In the event that the non-compliant party or parties fails or refuses to perform in compliance with the DBE Program or the Selected DBE Program Provisions, NMDOT will send the non-compliant party or parties a "Notice of Non-Compliance". If the non-compliant party or parties corrects the deficiencies, NMDOT will rescind the "Notice of Non-Compliance" and notify the party or parties. If the deficiencies are not corrected, NMDOT will initiate administrative action against the non-compliant party or parties, which may include but not be limited to:

- A. Termination of the contract.
- B. For construction, withholding an appropriate percentage of partial payments pursuant to the Non-Conformance provisions of the NMDOT Standard Specifications for Highway and Bridge construction. This appropriate percentage may be the amount of any proposed monetary sanction.
- C. Initiation of appropriate suspension or debarment or decertification proceedings.
- D. Referral of any unlawful actions to the appropriate enforcement agencies.
- E. Other actions as appropriate, at the discretion of NMDOT.

Ref 49 CFR §26.53

Section 10: Counting DBE Participation Towards Goals

- A. When a DBE participates in a contract, only the value of the work actually performed by the DBE will be credited toward DBE goals.
 - 1) The entire amount of the portion of a construction contract or design or other consultant contract that is performed by the DBE's own forces will be credited. Included are the cost of supplies and materials obtained by the DBE for the work of the contract, including supplies purchased or equipment leased by the DBE (except supplies and equipment the DBE subcontractor or subconsultant purchases or leases from the prime contractor or its affiliate).
 - 2) Credit will be allowed for the entire amount of fees or commissions charged by a DBE firm for providing a bona fide service, such as professional, technical, consultant, or managerial services or for providing bonds or insurance specifically required for the performance of a USDOT-assisted

contract. Credit will be allowed for fees considered reasonable and not excessive as compared with fees customarily allowed for similar services.

- 3) When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted only if the DBE subcontractor or subconsultant is itself a DBE. Work that a DBE subcontracts to a non-DBE firm does not count toward meeting the DBE goal.
- B. When a DBE performs as a participant in a joint venture, only credit for 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 will be allowed.
- C. Credit to a DBE contractor will be allowed only if the DBE is performing a commercially useful function on the contract.
- 1) A DBE performs a commercially useful function when it is responsible for execution of the work of the contract and is carrying out its responsibilities by actually performing, managing, and supervising the work involved. To perform a commercially useful function, the DBE must also be responsible, with respect to materials and supplies used on the contract, for negotiating price, determining quality and quantity, ordering the material, and installing (where applicable) and paying for the material itself. To determine whether a DBE is performing a commercially useful function, NMDOT will evaluate the amount of work subcontracted, industry practices, whether that amount the firm is to be paid under the contract is commensurate with the work it is actually performing and the DBE credit claimed for its performance of the work and other relevant factors.
 - 2) A DBE does not perform a commercially useful function if its role is limited to that of an extra participant in a transaction, contract, or project through which funds are passed on in order to obtain the appearance of DBE participation. In determining whether a DBE is such an extra participant, NMDOT will perform an examination of similar transactions, particularly those in which DBEs do not participate.
 - 3) If a DBE does not perform or exercise responsibility for at least 30% of the total cost of its contract with its own forces, 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, it will be presumed that the DBE is not performing a commercially useful function.
 - 4) When a DBE is presumed not to be performing a commercially useful function as provided above, the DBE may present evidence to NMDOT to rebut this presumption. It may be determined that the firm is performing a commercially useful function given the type of work involved and normal industry practices.
 - 5) Decisions concerning commercially useful function matters are not administratively appealable to USDOT, but are subject to review by the concerned operating administration.
- D. To determine whether a DBE trucking firm is performing a commercially useful function, NMDOT shall evaluate the amount of work subcontracted, industry practices and other relevant factors.
- 1) The DBE must be responsible for 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 counting DBE participation.

- 2) The DBE must itself own and operate at least one fully licensed, insured and operational truck used on the contract. The DBE receives credit for the total value of the transportation services it provides on the contract using trucks it owns, insures and operates using drivers it employs.
- 3) 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.
- 4) The DBE may also lease trucks from a non-DBE firm, including from an owner-operator. The DBE that leases trucks equipped with drivers from a non-DBE is entitled to credit for the total value of transportation services provided by non-DBE leased trucks equipped with drivers not to exceed the value of transportation services on the contract provided by DBE-owned trucks or leased trucks with DBE employee drivers. Additional participation by non-DBE owned trucks equipped with drivers receives credit only for the fee or commission it receives as a result of the lease arrangement.
- 5) The DBE may lease trucks without drivers from a non-DBE truck leasing company. If the DBE leases trucks from a non-DBE truck leasing company and uses its own employees as drivers, it is entitled to credit for the total value of these hauling services.

E. Count expenditures with DBEs for materials or supplies toward DBE goals as provided in the following:

- 1) If the materials or supplies are obtained from a DBE manufacturer, 100 percent of the cost of the materials or supplies can be counted.
 - a. 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 specification.
- 2) If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies will be credited toward the DBE goal.
 - a. 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.
 - b. A regular dealer must be an established, regular business that engages, as its principal business and under its own name, the purchase and sale or lease of the products in question.
 - c. A person may be a regular dealer in such bulk items as petroleum, products, steel, cement, gravel, stone, or asphalt without owning, operating, or maintaining a place of business as provided in this paragraph if the person both owns and operates distribution equipment for the products. Any supplementing of regular dealers' own distribution equipment shall be by a long-term lease agreement and not on an ad hoc or contract-by-contract basis.
 - d. Packagers, brokers, manufacturers' representatives, or other persons who arrange for expenditure transactions are not regular dealers within the meaning of this section.

- 3) With respect to materials or supplies purchased from a DBE which is neither a manufacturer nor a regular dealer, NMDOT 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 provided NMDOT determines the fees to be reasonable and not excessive as compared with fees customarily allowed for similar services. No portion of the cost of the materials or supplies themselves may be counted. NMDOT will determine the amount of credit awarded to a firm for provisions of materials and supplies on a contract by contract basis.
 - 4) If the firm is not currently certified as a DBE in accordance with the standards at the time of the execution of the subcontract, the firm's participation will not count towards the DBE goal, except as provided for in 49 CFR §26.87(i).
 - 5) NMDOT will not count toward the state goal the dollar value of work performed under a contract with a firm that has ceased to be certified.
 - 6) NMDOT will not count the participation of a DBE subcontractor or subconsultant toward the prime contractor's or consultant's DBE achievement or NMDOT's state goal until the amount being counted toward the goal has actually been paid to the DBE.
- F. A DBE subcontractor and a material supplier may request permission from NMDOT for the use of joint checks for payment from the prime contractor to the DBE subcontractor and the supplier. Joint checks may only be used if the following requirements are met:
- 1) The prime contractor acts solely as the guarantor;
 - 2) The DBE must release the check to the supplier;
 - 3) The use of the joint check is a commonly recognized business practice of the industry;
 - 4) NMDOT approves the use of a joint check(s) before it is used; and
 - 5) The prime contractor/DBE firm must furnish the cancelled check used for payment of materials/supplies under the contract.

Ref 49 CFR §26.55

CHAPTER IV – DBE CERTIFICATION STANDARDS

Section 1: Burdens of Proof

- A. In determining whether to certify a firm as eligible to participate as a DBE, NMDOT will apply the standards of 49 CFR §26.61.
- 1) The firm seeking certification has the burden of demonstrating to NMDOT, by a preponderance of the evidence, that it meets the requirements of this DBE Program concerning group membership or individual disadvantage, business size, ownership and control.
 - 2) NMDOT must rebuttably presume that members of the designated groups are socially and economically disadvantaged. This means that these individuals do not have the burden of proving to NMDOT that they are socially and economically disadvantaged. In order to obtain the benefit of the rebuttable presumption, individuals must submit a signed, notarized statement that they are a member of one of the groups in 49 CFR §26.67. Applicants are obligated to provide NMDOT information concerning their economic disadvantage (see 49 CFR §26.67)
 - 3) Individuals who are not presumed to be socially and economically disadvantaged, and individuals whose presumption of disadvantage has been rebutted, have the burden of proving to NMDOT, by a preponderance of the evidence, that they are socially and economically disadvantaged. (Refer to Appendix E to Part 26, “Individual Determinations of Social and Economic Disadvantage”)
 - 4) NMDOT determines whether individuals and firms have met their burden of demonstrating group membership, ownership, control and social and economic disadvantage (where disadvantage must be demonstrated on an individual basis) by considering all the facts in the record, viewed as a whole.

Ref: 49 CFR §26.61

Section 2: Group Membership

- A. NMDOT, if it has reason to well-founded reason to question whether an individual is a member of a group that is presumed socially and economically disadvantaged, requires the individual to demonstrate, by a preponderance of the evidence, that he or she is a member of the group.
- B. NMDOT must provide the individual a written explanation of its reasons for questioning his or her group membership and a written request for additional evidence.
- C. In implementing this section, NMDOT must take special care to ensure that NMDOT 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.
- D. NMDOT, in making such a determination, shall 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. NMDOT requires the applicant to produce appropriate documentation of group membership.

- E. If NMDOT determines that an individual claiming to be a member of a group presumed to be disadvantaged is not a member of a designated disadvantaged group, the individual must demonstrate social and economic disadvantage on an individual basis.
- F. NMDOT decisions concerning membership in a designated group are subject to the certification appeals procedure of 49 CFR §26.89.

Ref: 49 CFR §26.63

Section 3: Business Size Determinations

- A. To be an eligible DBE, a firm (including its affiliates) shall be an existing small business, as defined by SBA standards. NMDOT applies current SBA business size standards found in 13 CFR Part 121 appropriate to the type(s) of work the firm seeks to perform in USDOT-assisted contracts.
- B. Even if it meets the requirements in 49 CFR §26.65(a), a firm is not an eligible DBE in a Federal fiscal year if the firm (including affiliates) has had average annual gross receipts, as defined by SBA regulations (see 13 CFR 121.402), over the firm's previous three fiscal years in excess of \$23.98 million.
- C. USDOT adjusts the number in paragraph B of this section annually using the Department of Commerce price deflators for purchases by State and local governments as the basis for this adjustment. If the number in paragraph B conflicts with the most current USDOT adjusted number, the most current USDOT adjusted number shall prevail.

Ref: 49 CFR §26.65

Section 4: Determination of Social and Economic Disadvantage

A. Presumption of Disadvantage:

- 1) NMDOT must rebuttably presume that citizens of the United States (or lawfully admitted permanent residents) who are Women, Black Americans, Hispanic Americans, Native Americans, Asia-Pacific Americans, Subcontinent Asian Americans, or other minorities found to be disadvantaged by the SBA, are socially and economically disadvantaged individuals. NMDOT requires applicants to submit a signed notarized certification that each presumptively disadvantaged owner is, in fact, socially and economically disadvantaged.
- 2) NMDOT must require each individual owner of a firm applying to participate as a DBE (except a firm applying to participate as a DBE airport concessionaire) 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.
- 3) NMDOT must require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation, through the submission of Form No. A-1146. See Appendix "D" of this Manual. Where necessary, the NMDOT in order to accurately determine an individual's personal net worth, on a case-by-case basis, may require additional financial information from the owner of an application firm (e.g.

information concerning the assets of the owner's spouse, where needed to clarify whether assets have been transferred to the spouse or when the owner's spouse is involved in the operation of the company). Requests for additional information shall not be unduly burdensome or intrusive.

4) In determining an individual's net worth, NMDOT must observe the following requirements:

- a. Exclude an individual's ownership interest in the applicant firm.
- b. Exclude the individual's equity in his or her primary residence (except any portion of such equity that is attributable to excessive withdrawals from the applicant firm). The equity is the market value of the residence less any mortgages and home equity loan balances.
- c. Do not use a contingent liability to reduce an individual's net worth.
- d. With respect to assets held in vested pension plans, Individual Retirement Accounts, 401 (k) accounts, or other retirement savings or investment programs in which the assets cannot be distributed to the individual at the present time without significant adverse tax or interest consequences, include only the present value of such assets, less the tax and interest penalties that would accrue if the asset were distributed at the present time.

5) Notwithstanding any provision of Federal or state law, NMDOT must not release an individual's personal net worth statement or any documentation supporting it to any third party without the written consent of the submitter. Provided, that NMDOT must transmit this information to USDOT in any certification appeal proceeding under 49 CFR §26.89 or to any other state to which the individual's firm has applied for DBE certification.

B. Rebuttal of Presumption of Disadvantage

NMDOT may rebut an individual's presumption of economic disadvantage in two ways:

- 1) If the statement of personal net worth that an individual submits shows the individual's personal net worth exceeds \$1.32 million, the individual's presumption of economic disadvantage is rebutted. NMDOT is not required to have a proceeding in order to rebut the presumption of economic disadvantage in this case.
- 2) 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, NMDOT 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 (3) year period exceeds \$350,000.00;
 - 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.

- 3) If NMDOT 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, NMDOT may, at any time, start a proceeding to determine whether the presumption should be regarded as rebutted with respect to that individual. The procedures for these proceeding are detailed in Chapter V Section 5 of this Manual.
- 4) In such a proceeding, NMDOT has the burden of demonstrating, by a preponderance of the evidence, that the individual is not socially and economically disadvantaged. NMDOT may require the individual to produce information relevant to the determination of his or her disadvantage.
- 5) When an individual's presumption of social and economic disadvantage has been rebutted, his or her ownership and control of the firm in question cannot be used for purposes of DBE eligibility unless and until he or she makes an individual showing of social and/or economic disadvantage. If the basis for rebutting the presumption is a determination that the individual's net worth exceeds \$1.32 million, the individual is no longer eligible for participation in the program and cannot regain eligibility by making an individual showing of disadvantage, so long as his or her personal net worth remains above that amount.

C. Transfers within two years:

- 1) Except as set forth in paragraph E(2), NMDOT must attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, to a trust a beneficiary of which is an immediate family member, or to the applicant firm for less than fair market value, within two years prior to a concern's application for participation in the DBE program or within two years of NMDOT's review of the firm's annual affidavit, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.
- 2) NMDOT must not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occurrences, such as birthdays, graduations, anniversaries, and retirements.
- 3) Individual Determination of Social and Economic Disadvantage: Firms owned and controlled by individuals who are not presumed to be socially and economically disadvantaged (including individuals who presumed disadvantage has been rebutted) may apply for DBE certification. NMDOT must make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged. In such a proceeding, the applicant firm has the burden of demonstrating to NMDOT, by a preponderance of the evidence, that the individuals who own and control the firm are socially and economically disadvantaged. An individual whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. In making these determinations, NMDOT shall use the guidance found in Appendix "E" of this Manual. Applicants shall provide sufficient information to permit such determinations.

Ref: 49 CFR §26.67

Section 5: Determination of Ownership

- A. In determining whether the socially and economically disadvantaged participants in a firm own the firm, NMDOT will consider all the facts in the record, viewed as a whole, including the origin all assets and how and when they were used in obtaining the firm. All transactions for the establishment and ownership (or transfer of ownership) must be in the normal course of business, reflecting commercial and arms-length practices.
- B. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals.
 - 1) In the case of a corporation, socially and economically disadvantaged individuals must own at least 51 percent of each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding.
 - 2) In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement.
 - 3) In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.
- C. The firm's ownership by socially and economically disadvantaged individuals, including their contribution of capital or expertise to acquire their ownership interests, must be real, substantial, and continuing, going beyond pro forma ownership of the firm as reflected in ownership documents. Proof of contribution of capital should be submitted at the time of the application. When contribution of capital is through a loan, there must be documentation of the value of assets used as collateral for the loan. The disadvantaged owners must enjoy the customary incidents of ownership, and share in the risk and be entitled to the profits and loss commensurate with their ownership interests, as demonstrated by 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.
- D. All securities that constitute ownership of a firm shall be held directly by disadvantaged persons. Except as provided in this paragraph, no securities or assets held in trust, or by any guardian for a minor, are considered as held by disadvantaged persons in determining the ownership of a firm. However, securities or assets held in trust are regarded as held by a disadvantaged individual for purposes of determining ownership of the firm, if:
 - 1) The beneficial owner of securities or assets held in trust is a disadvantaged individual, and the trustee is the same or another such individual; or
 - 2) The beneficial owner of a trust is a disadvantaged individual who, rather than the trustee, exercises effective control over the management, policy-making, and daily operational activities of the firm. Assets held in a revocable living trust may be counted only in the situation where the same disadvantaged individual is the sole grantor, beneficiary, and trustee.
- E. The contributions of capital or expertise by the socially and economically disadvantaged owners to acquire their ownership interests must be real and substantial. Examples of insufficient contributions

include a promise to contribute capital, an unsecured note payable to the firm or an owner who is not a disadvantaged individual, mere participation in a firm's activities as an employee, or capitalization not commensurate with the value of the firm. Debt instruments from financial institutions or other organizations that lend funds in the normal course of their business do not render a firm ineligible, even if the debtor's ownership interest is security for the loan.

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

1) The owner's expertise must be:

- a. In a specialized field;
- b. Of outstanding quality;
- c. In areas critical to the firm's operations;
- d. Indispensable to the firm's potential success;
- e. Specific to the type of work the firm performs; and
- f. Documented in the records of the firm. These records must clearly show the contribution of expertise and its value to the firm.

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

G. NMDOT 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:

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

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

- 1) Involved in the same firm for which the individual is seeking certification, or an affiliate of that firm;
- 2) Involved in the same or a similar line of business; or
- 3) Engaged in an ongoing business relationship with the firm, or an affiliate of the firm, for which the individual is seeking certification.

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

- 1) The gift or transfer to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
 - 2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who provided the gift or transfer.
- J. NMDOT will apply the following rules in situations in which marital assets form a basis for ownership of a firm:
- 1) When marital assets (other than the assets of the business in question), held jointly or as community property by both spouses, are used to acquire the ownership interest asserted by one spouse, NMDOT 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. NMDOT does not count a greater portion of joint or community property assets toward ownership than state law would recognize as belonging to the socially and economically disadvantaged owner of the applicant firm.
 - 2) A copy of the document legally transferring and renouncing the other spouse's rights in the jointly owned or community assets used to acquire an ownership interest in the firm must be included as part of the firm's application for DBE certification.
- K. NMDOT may consider the following factors in determining the ownership of a firm. However, NMDOT will not regard a contribution of capital as failing to be real and substantial, or find a firm ineligible, solely because:
- 1) A socially and economically disadvantaged individual acquired his or her ownership interest as the result of a gift, or transfer without adequate consideration, other than the types set forth in paragraph H of this section;
 - 2) There is a provision for the co-signature of a spouse who is not a socially and economically disadvantaged individual on financing agreements, contracts for the purchase or sale of real or personal property, bank signature cards, or other documents; or
 - 3) Ownership of the firm in question or its assets is transferred for adequate consideration from a spouse who is not a socially and economically disadvantaged individual to a spouse who is such an individual. In this case, NMDOT will give particularly close and careful scrutiny to the ownership and control of a firm to ensure that it is owned and controlled, in substance as well as in form, by a socially and economically disadvantaged individual.

Ref: 49 CFR §26.69

Section 6: Determination of Control

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

- B. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms.
- 1) In determining whether a potential DBE is an independent business, NMDOT will scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources.
 - 2) NMDOT will consider whether present or recent employer/employee relationships between the disadvantaged owner(s) of the potential DBE and non-DBE firms or persons associated with non-DBE firms compromise the independence of the potential DBE firm.
 - 3) NMDOT will examine the firm's relationships with prime contractors to determine whether a pattern of exclusive or primary dealings with a prime contractor compromises the independence of the potential DBE firm.
 - 4) In considering factors related to the independence of a potential DBE firm, NMDOT will consider the consistency of relationships between the potential DBE and non-DBE firms with normal industry practice.
- C. A DBE firm must not be subject to any formal or informal restrictions which limit the customary discretion of the socially and economically disadvantaged owners. There can be no restrictions through corporate charter provisions, by-law provisions, contracts or any other formal or informal devices (e.g., cumulative voting rights, voting powers attached to different classes of stock, employment contracts, requirements for concurrence by non-disadvantaged partners, conditions precedent or subsequent, executory agreements, voting trusts, restrictions on or assignments of voting rights) that prevent the socially and economically disadvantaged owners, without the cooperation or vote of any non-disadvantaged individual, from making any business decision of the firm. This paragraph does not preclude a spousal co-signature on documents as provided for in 49 CFR §26.69(j)(2).
- D. The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations.
- 1) A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president).
 - 2) In a corporation, disadvantaged owners must control the board of directors.
 - 3) In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.
- E. Individuals who are not socially and economically disadvantaged or immediate family members may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm.
- F. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners

must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

- G. The socially and economically disadvantaged owners must have an overall understanding of, and managerial and technical competence and experience directly related to, the type of business in which the firm is engaged and the firm's operations. The socially and economically disadvantaged owners are not required to have experience or expertise in every critical area of the firm's operations, or to have greater experience or expertise in a given field than managers or key employees. The socially and economically disadvantaged owners must have the ability to intelligently and critically evaluate information presented by other participants in the firm's activities and to use this information to make independent decisions concerning the firm's daily operations, management, and policymaking. Generally, expertise limited to office management, administration, or bookkeeping functions unrelated to the principal business activities of the firm is insufficient to demonstrate control.
- H. NMDOT will not deny certification solely on the ground that the person lacks the license or credential. However, NMDOT may take into account the absence of the license or credential as one factor in determining whether the socially and economically disadvantaged owners actually control the firm.
- I. NMDOT 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. NMDOT 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.
- J. In a case where a non-disadvantaged individual formerly controlled the firm, and a socially and economically disadvantaged individual now controls it, NMDOT 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.
- K. 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.
- L. A socially and economically disadvantaged individual may control a firm even though one or more of the individual's immediate family members (who themselves are not socially and economically disadvantaged individuals) participate in the firm as a manager, employee, owner, or in another capacity. Except as otherwise provided in this paragraph, NMDOT will make a judgment about the control the socially and economically disadvantaged owner exercises vis-à-vis other persons involved in the business as NMDOT does in other situations, without regard to whether or not the other persons are immediate family members.

- 1) If NMDOT 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.
- M. Where a firm was formerly owned and/or controlled by a non-disadvantaged individual (whether or not an immediate family member), ownership and/or control were transferred to a socially and economically disadvantaged individual, and the non-disadvantaged individual remains involved with the firm in any capacity, there is a rebuttable presumption of control by the non-disadvantaged individual unless the disadvantaged individual now owning the firm must demonstrate to NMDOT, by clear and convincing evidence, that:
- 1) The transfer of ownership and/or control to the disadvantaged individual was made for reasons other than obtaining certification as a DBE; and
 - 2) The disadvantaged individual actually controls the management, policy, and operations of the firm, notwithstanding the continuing participation of a non-disadvantaged individual who formerly owned and/or controlled the firm.
- N. In determining whether a firm is controlled by its socially and economically disadvantaged owners, NMDOT may consider whether the firm owns equipment necessary to perform its work. However, NMDOT 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.
- O. NMDOT 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 NMDOT only that its socially and economically disadvantaged owners are able to control the firm with respect to that type of work. NMDOT may not, in this situation, require that the firm be recertified or submit a new application for certification, but NMDOT will verify the disadvantaged owner's control of the firm in the additional type of work.
- 1) The types of work a firm can perform must be described with the most specific available NAICS code for that type of work. NMDOT may also apply a descriptor from a classification scheme of equivalent detail and specificity. A correct NAICS code is one that describes, as specifically as possible, the principal goods or services which the firm would provide to USDOT recipients. Multiple NAICS codes may be assigned where appropriate. Program participants must rely on, and not depart from, the plain meaning of NAICS code descriptions in determining the scope of a firm's certification.
 - 2) Firms and recipients must check carefully and make sure that the NAICS codes cited in a certification are kept up-to-date and accurately reflect work which NMDOT has determined the firm's owners can control. The firm bears the burden of providing detailed company information NMDOT needs to make an appropriate NAICS code designation.
 - 3) If a firm believes that there is not a NAICS code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that NMDOT, in its certification documentation, supplement the assigned NAICS code(s) with a clear, specific and detailed narrative description of the type of work in which the firm is certified. A vague, general or

confusing description is not sufficient for this purpose, and recipients should not rely on such a description in determining whether a firm's participation can be counted toward DBE goals.

- 4) NMDOT is not precluded from changing a certification classification or description if there is a factual basis in the record. However, NMDOT will not make after-the-fact statements about the scope of a certification, not supported by evidence in the record of the certification decision.
- P. A business operating under a franchise or license agreement may be certified if it meets the standards in this section and the franchiser or licensor is not affiliated with the franchisee or licensee. In determining whether affiliation exists, NMDOT 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.
- Q. 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.
- R. 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.

Ref: 49 CFR §26.71

Section 7: Other Rules Affecting Certification

- A. 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 B of this section, NMDOT will not consider commercially useful function issues in any way in making decisions about whether to certify a firm as a DBE.
- B. NMDOT 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.
- C. NMDOT must evaluate the eligibility of a firm on the basis of present circumstances. NMDOT must not refuse to certify a firm based solely on historical information indicating a lack of ownership or control of the firm by socially and economically disadvantaged individuals at some time in the past, if the firm currently meets the ownership and control standards of 49 CFR Part 26.

- D. NMDOT 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.
- E. DBE firms and firms seeking DBE certification shall cooperate fully with NMDOT requests (and USDOT requests) for information relevant to the certification process. Failure or refusal to provide such information is a ground for a denial or removal of certification.
- F. 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.
- F. An eligible DBE firm must be owned by individuals who are socially and economically disadvantaged. Except as provided in this paragraph, a firm that is not owned by such individuals, but instead is owned by another firm (even a DBE firm) cannot be an eligible DBE.
- 1) If socially and economically disadvantaged individuals own and control a firm through a parent or holding company, established for tax, capitalization or other purposes consistent with industry practice, and the parent or holding company in turn owns and controls an operating subsidiary, NMDOT may certify the subsidiary if it otherwise meets all requirements of this subpart. In this situation, the individual owners and controllers of the parent or holding company are deemed to control the subsidiary through the parent or holding company.
 - 2) NMDOT 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:
 - a. 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.
 - b. 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.
 - c. 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 NMDOT may certify the subsidiary, if all other requirements are met.
 - d. 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, NMDOT will not certify it because it fails to meet control requirements.
 - e. 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 NMDOT will not certify the subsidiary.

- f. **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.
- G. 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.
- H. A DBE firm is not required to be prequalified as a condition for certification.
- I. 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 §26.65. Such a firm must be controlled by socially and economically disadvantaged individuals, as provided in 49 CFR §26.71.
- J. NMDOT will apply the following special rules to the certification of Alaska Native Corporations (ANCs).
- 1) Notwithstanding any other provisions of this subpart, a direct or indirect subsidiary corporation, joint venture, or partnership entity of an ANC is eligible for certification as a DBE if it meets all of the following requirements:
 - 2) The Settlement Common Stock of the underlying ANC and other stock of the ANC held by holders of the Settlement Common Stock and by Natives and descendants of Natives represents a majority of both the total equity of the ANC and the total voting power of the corporation for purposes of electing directors;
 - a. The shares of stock or other units of common ownership interest in the subsidiary, joint venture, or partnership entity held by the ANC and by holders of its Settlement Common Stock represent a majority of both the total equity of the entity and the total voting power of the entity for the purpose of electing directors, the general partner, or principal officers; and,
 - b. The subsidiary, joint venture, or partnership entity has been certified by the SBA under the 8(a) or small disadvantaged business program.
- J. As a recipient to whom an ANC-related entity applies for certification, NMDOT will not use the USDOT uniform application form (see Appendix "F"). NMDOT will obtain from the firm documentation sufficient to demonstrate that entity meets the requirements of paragraph I(1) of this section. NMDOT will also obtain sufficient information about the firm to allow it to administer the DBE program (e.g., information that would appear in the DBE Directory).
- K. If an ANC-related firm does not meet all the conditions of paragraph I(1) of this section, then it must meet the requirements of paragraph H of this section in order to be certified, on the same basis as firms owned by Indian Tribes or Native Hawaiian Organizations.

Ref: 49 CFR §26.73

CHAPTER V – CERTIFICATION PROCEDURES

Section 1: Unified Certification Programs

- A. In accordance with the requirements of 49 CFR §26.81, USDOT recipients in New Mexico adopted a Unified Certification Program. The New Mexico Unified Certification Program (NMUCP) was submitted to FHWA and USDOT and was subsequently approved. It has been implemented with all USDOT recipients in the State of New Mexico operating in accordance with its terms. Interested applicants apply for DBE certification only once in order to be determined eligible to participate as a DBE with any USDOT recipient in the state.
- B. The Construction and Civil Rights Bureau administers the DBE Program and NMUCP on behalf of NMDOT and the State of New Mexico.
- C. The NMUCP agreement provides for the establishment of a UCP meeting all the requirements of this section. The agreement specifies that:
 - 1) The NMUCP will follow all certification procedures and standards of this part, on the same basis as NMDOT;
 - 2) The NMUCP shall cooperate fully with oversight, review and monitoring activities of USDOT and its operating administrations; and
 - 3) The NMUCP shall implement USDOT directives and guidance concerning certification matters.
- D. The NMUCP shall make all certifications on behalf of USDOT recipients in New Mexico with respect to participation in the USDOT DBE Program.
 - 1) Certification decisions by the NMUCP shall be binding on all USDOT recipients within New Mexico.
 - 2) The NMUCP shall provide “one-stop shopping” to applicants for certification, such that an applicant is required to apply only once for a DBE certification that will be honored by all recipients in New Mexico.
 - 3) All obligations of recipients with respect to certification and non-discrimination must be carried out by UCPs, and recipients may use only UCPs that comply with the certification and nondiscrimination requirements of 49 CFR Part 26.
- E. A DBE firm must be fully, finally and currently certified before the due date for bids or offers on an Invitation to Bid or Request for Proposal on which a firm seeks to participate as a DBE.
- F. The NMUCP is not required to process an application for certification from a firm having its principal place of business outside New Mexico if the firm is not certified by the UCP in the state in which it maintains its principal place of residence. The “home state” shall share its information and documents concerning the firm with other UCPs that are considering the firm’s application.
- G. Subject to USDOT approval as provided in this section, the recipients in two or more states may form a regional UCP. UCPs may also enter into written reciprocity agreements with other UCPs. Such an

agreement shall outline the specific responsibilities of each participant. A UCP may accept the certification of any other UCP or USDOT recipient.

- H. NMDOT may enter into agreements with other recipients, on a regional or inter-jurisdictional basis, to perform certification functions required by this part. NMDOT may also grant reciprocity to other recipient's certification decisions.
- I. The NMUCP maintains and makes available to interested persons a real-time directory identifying all firms certified by the NMUCP. The directory is available online at: nmdot.dbesystem.com.

Ref: 49 CFR §26.81

Section 2: Certification Application and Procedures

- A. NMDOT is not required to process an application for certification from a firm that does not provide transportation related goods or services.
- B. NMDOT's certification application form and documentation requirements are found in Appendix "G" of this Manual.
- C. For information about the certification process, firms may contact NMDOT's CCRB at:

Phone: 505-469-1435

D. Certification Decisions:

- 1) NMDOT will ensure that only firms certified as eligible DBEs under this section participate as DBEs in NMDOT's program.
- 2) NMDOT will determine the eligibility of firms as DBEs consistent with the standards of Chapter IV of this Manual.
- 3) NMDOT will take all the following steps in determining whether a DBE firm meets the earlier defined Certification Standards:
 - a. Perform an on-site visit to the offices of the firm's principal place of business. NMDOT will interview the principal officers of the firm and review their resumes and/or work histories. NMDOT will also perform an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation in NMDOT's jurisdiction New Mexico or adjacent local areas. NMDOT may rely upon the site visit report of any other recipient with respect to a firm applying for certification.
 - b. Analyze documentation related to legal structure, ownership, and control of the applicant firm. This includes, but is not limited to, Articles of Incorporation; corporate by-laws or operating agreements; organizational, annual and board/member meeting records; stock ledgers and certificates; and State-issued Certification of Good Standing.
 - c. Analyze the bonding and financial capacity of the firm; lease and loan agreements; bank accounts signature cards.

- d. Determine the work history of the firm, including contracts it has received and work it has completed; and payroll records.
 - e. Obtain a statement from the firm of the type of work it prefers to perform as part of the DBE program and its preferred locations for performing the work, if any.
 - f. Obtain or compile a list of the equipment owned by or available to the firm and the licenses the firm and its key personnel possess to perform the work it seeks to do as part of the DBE program.
 - g. Obtain complete Federal tax returns (or request for extensions) filed by the firm, its affiliates, and the socially and economically disadvantaged owners for the last three years. A complete return includes all forms, schedules, and statements filed with the Internal Revenue Service.
 - h. Require potential DBEs to complete and submit an appropriate application form. See Appendix "F" of this Manual. NMDOT will 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. NMDOT will review all information on the form prior to making a decision about the eligibility of the firm. NMDOT may request clarification of information contained in the application at any time in the application process. NMDOT will prohibit the release of personal financial information associated with determining net worth and related certification eligibility issues.
- 4) When another recipient, in connection with its consideration of the eligibility of a firm, makes a written request for certification information NMDOT has obtained about that firm (e.g., including application materials or the report of a site visit, if NMDOT has made one to the firm), NMDOT must promptly make the information available to the other recipient.
 - 5) Subject to the approval of the concerned operating administration, NMDOT may charge a reasonable application fee. NMDOT does not charge an application fee at this time.
 - 6) NMDOT 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.
 - 7) Once NMDOT has certified a DBE, it shall remain certified unless and until its certification has been removed, in whole or in part, through the procedures of Chapter V, Section 4. NMDOT may not require DBEs to reapply for certification or require recertification of currently certified firms. However, NMDOT may conduct a certification review of a certified DBE firm, including a new on-site review, if appropriate, in light of changed circumstances, a complaint, or other information concerning the firm's eligibility. If NMDOT has grounds to question the firm's eligibility, NMDOT may conduct an on-site review on an unannounced basis, at the firm's offices and jobsites.
 - 8) All DBEs must inform NMDOT in writing of any change in circumstances affecting the DBE's ability to meet size, disadvantaged status, ownership, or control requirements of this part or any material change in the information provided in NMDOT's application form.

- a. Changes in management responsibility among members of a limited liability company are covered by this requirement.
 - b. The DBE must attach supporting documentation describing in detail the nature of such changes.
 - c. The notice must take the form of an affidavit sworn to by the owners of the firm 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. The DBE must provide the written notification within 30 days of the occurrence of the change. If the DBE fails to make timely notification of such a change, the DBE will be deemed to have failed to cooperate under 49 CFR §26.109(c).
- 9) A DBE must provide to NMDOT, every year on or before the anniversary of the date of the DBE's 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 the DBE has notified NMDOT under paragraph (9) of this section. The affidavit shall specifically affirm that the DBE firm continues to meet SBA business size criteria and the overall gross receipts cap of 49 CFR Part 26, documenting this affirmation with supporting documentation of the DBE firm's size and gross receipts (e.g. submission of Federal tax returns). If the DBE fails to provide this information in a timely manner, the DBE will be deemed to have failed to cooperate under 49 CFR §26.109(c) and NMDOT will take steps to remove the DBE firm's eligibility.
- 10) NMDOT will make decisions on applications for certification within 90 days of receiving from the applicant firm all required information. NMDOT 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. NMDOT's failure to make a decision by the applicable deadline under this paragraph is deemed a constructive denial of the application, on the basis of which the firm may appeal to USDOT under 49 CFR §26.89.
- 11) NMDOT will advise each applicant within 30 days of receipt of the application whether the application is complete and suitable for evaluation and, if not, what additional information or action is required.
- 12) Except as otherwise provided in this paragraph, if an applicant withdraws its application before NMDOT has issued a decision on the application, the applicant can resubmit the application at any time. NMDOT may not apply the waiting period provided in Section 3(C) below before allowing the applicant to resubmit its application. However, NMDOT may place the reapplication behind other applications that have been made since the firm's previous application that was withdrawn. NMDOT may also apply the waiting period provided in Section 3(C) below to a firm that has established a pattern of frequently withdrawing applications before a decision is made.

Ref: 49 CFR §26.83

Section 3: Interstate Certification

- A. This section applies to any firm that is currently certified in its home state.
- B. When a firm currently certified in its home state applies to NMDOT for DBE certification, NMDOT may, at its discretion, accept the home state's certification and certify the firm, without further procedures.
 - 1) To obtain certification in this manner, the firm must produce to NMDOT a copy of its certification from its home state.
 - 2) Before certifying the firm, NMDOT must confirm that the firm has a current valid certification from its home state. NMDOT can do so by reviewing the home state's electronic directory or obtaining written confirmation from the home state.
- C. In any situation in which NMDOT chooses not to accept the home state's certification of a firm as in Section 3 B, the applicant firm must provide the information in paragraphs C(1) through (4) of this section to NMDOT.
 - 1) The applicant firm must provide to NMDOT a complete copy of the application form, all supporting documents and any other information the applicant submitted to its home state or any other state related to the firm's certification. This includes affidavits of no change and any notices of changes that the applicant firm submitted to its home state, as well as any correspondence the applicant firm has had with its home state's UCP or any other recipient concerning the applicant firm's application or status as a DBE firm.
 - 2) The applicant firm must also provide to NMDOT any notices or correspondence from states other than the applicant firm's home state relating to the applicant firm's status as an applicant or certified DBE in those states. For example, if the applicant firm has been denied certification or decertified in another state, or subject to a decertification in another state, the applicant firm must inform NMDOT of this fact and provide to NMDOT all documentation concerning these actions.
 - 3) If the applicant firm has filed a certification appeal with USDOT, the applicant firm must inform NMDOT of that fact and provide to NMDOT the firm's letter of appeal and USDOT's response.
 - 4) The applicant firm 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.
 - a. This affidavit must affirm that the applicant firm has submitted all the information required by paragraph C of this section (49 CFR §26.85(c)) and the information is complete and, in the case of the information required by paragraph C(1) of this section, is an identical copy of the information submitted to the applicant firm's home state.
 - b. If the on-site report from the applicant firm's home state supporting the certification in the home state is more than three years old, as of the date of application to NMDOT, NMDOT requires that the applicant firm's affidavit also affirm that the facts in the on-site report remain true and correct.

D. When NMDOT receives from an applicant firm all the information required by paragraph C of this section, NMDOT will take the following actions:

- 1) NMDOT will contact the applicant firm's home state within seven days and request a copy of the site visit review report for the firm, any updates to the site visit review, and any evaluation of the firm based on the site visit. The home state must transmit this information to NMDOT within seven days of receiving the request. A pattern by NMDOT of not making such requests in a timely manner or by the home state or any other state of not complying with such requests in a timely manner is noncompliance with 49 CFR §26.85.
- 2) NMDOT will determine whether there is good cause to believe that the home state's certification of the firm is erroneous or should not apply in New Mexico. Reasons for making such a determination may include the following:
 - a. Evidence that the home state's certification was obtained by fraud;
 - b. New information, not available to the home state at the time of its certification, showing that the firm does not meet eligibility criteria;
 - c. The home state's certification was factually erroneous or was inconsistent with the requirements of this section (49 CFR §26.85);
 - d. The state law of New Mexico requires a result different from the state law of the home state;
 - e. The information provided by the applicant firm did not meet the requirements of paragraph C of this section.
- 3) Unless NMDOT has determined that there is good cause to believe that the home state's certification is erroneous or should not apply in New Mexico, NMDOT will, no later than 60 days from the date NMDOT received from the applicant firm all of the information required by paragraph C of this section, send to the applicant firm a notice that it is certified and place the firm on the NMDOT directory of certified DBE firms.
- 4) If NMDOT determines that there is good cause to believe that the home state's certification is erroneous or should not apply in New Mexico, NMDOT will, no later than 60 days from the date NMDOT received from the applicant firm all of the information required by paragraph C of this section, send to the applicant firm a notice stating the reasons for the determination.
 - a. This notice will state with particularity the specific reasons why NMDOT believes that the firm does not meet the requirements for DBE eligibility and will offer the firm an opportunity to respond to NMDOT with respect to these reasons.
 - b. The firm may elect to respond in writing, to request an in-person meeting with NMDOT's decision maker to discuss NMDOT's objection to the firm's eligibility, or both. If the firm requests a meeting, NMDOT will schedule the meeting to take place within 30 days of receiving the firm's request.
 - c. The firm bears the burden of demonstrating, by a preponderance of evidence, that it meets the eligibility requirements of 49 CFR Part 26 with respect to the particular issues raised by NMDOT's notice. The firm is not otherwise responsible for further demonstrating its eligibility to NMDOT.

- d. The decision maker for NMDOT will be an individual who is thoroughly familiar with the provisions of 49 CFR Part 26 concerning certification.
 - e. NMDOT will issue a written decision within 30 days of the receipt of the written response from the firm or the meeting with the decision maker, whichever is later.
 - f. The firm's application for certification is stayed pending the outcome of this process.
 - g. A decision under D(4) of this section may be appealed to the USDOT Office of Civil Rights under 49 CFR §26.89.
- E. If NMDOT has not received from the applicant firm's home state a copy of the site visit review report by a date 14 days after NMDOT made a timely request for it, NMDOT may hold action required by paragraphs D(2) through D(4) of this section in abeyance pending receipt of the site visit review report. In this event, NMDOT will, no later than 30 days from the date on which NMDOT received from the applicant firm all the information required by paragraph C of this section, notify the firm in writing of the delay in the process and the reason for it.
- F. When NMDOT denies a firm's application, rejects the application of a firm certified in its home state or any other state in which the firm is certified, through the procedures of paragraph D(4) of this section, or decertifies a firm, in whole or in part, NMDOT will make an entry in the Department of Transportation Office of Civil Rights' (DOCR) Ineligibility Determination Online Database. NMDOT will enter the following information:
- 1) The name of the firm;
 - 2) The name(s) of the firm's owner(s);
 - 3) The type and date of the action;
 - 4) The reason for the action.
- G. NMDOT will check the DOCR website at least once every month to determine whether any firm that is applying to NMDOT for certification or that NMDOT has already certified is on the list.
- H. For any such firm that is on the list, NMDOT will promptly request a copy of the listed decision from the UCP that made it. The UCP receiving such a request must provide a copy of the decision within seven days of receiving the request. When NMDOT receives such a decision, NMDOT will consider the information in the decision in determining what, if any, action to take with respect to the certified DBE firm or applicant.

Ref: 49 CFR §26.85

Section 4: Denials of Initial Requests for Certification

- A. When NMDOT denies a request by a firm which is not currently certified with New Mexico's DBE Program to be certified as a DBE, NMDOT 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. All documents and other information on which the denial is based will be made available to the applicant on written request.

- B. When a firm is denied certification, a time period of twelve months must elapse before the firm may reapply for certification. The time period for reapplication begins to run on the date the explanation was received by the firm. An applicant's appeal of NMDOT's decision to USDOT pursuant to 49 CFR §26.89 does not extend this period.
- C. When NMDOT makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to USDOT under 49 CFR §26.89.

Ref: 49 CFR §26.86

Section 5: Removing a DBE's Eligibility

A. Ineligibility complaints:

- 1) Any person may file with NMDOT a written complaint alleging that a currently certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. NMDOT is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of the complainant's identity must be protected as provided in 49 CFR §26.109(b).
- 2) NMDOT will review its records concerning the firm, any material provided by the firm and the complainant, and any other available information. NMDOT may request additional information from the firm or conduct any other investigation that it deems necessary.
- 3) If NMDOT determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, NMDOT must provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If NMDOT determines that such reasonable cause does not exist, NMDOT must notify the complainant and the firm in writing of this determination and the reasons for it. All statements of reasons for findings on the issue of reasonable cause must specifically reference the evidence in the record on which each reason is based.

B. NMDOT Initiated Proceedings:

If, based on notification by the firm of a change in its circumstances or other information that comes to NMDOT's attention, and if there is reasonable cause to believe that a currently certified firm is ineligible, NMDOT must provide written notice to the firm that it proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause must specifically reference the evidence in the record on which each reason is based.

C. USDOT Directive to Initiate Proceeding:

- 1) If the concerned operating administration determines that information in NMDOT's certification records, or other information available to the concerned operating administration, provides

reasonable cause to believe that a firm certified by NMDOT does not meet eligibility criteria, the concerned operating administration may direct NMDOT to initiate a proceeding to remove the firm's certification.

- 2) USDOT (concerned operating administration) must provide NMDOT and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.
 - 3) NMDOT must immediately commence and prosecute a proceeding to remove eligibility.
- D. When NMDOT notifies a firm that there is a reasonable cause to remove its eligibility as provided above, NMDOT will give the firm an opportunity for an informal hearing, at which time the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified.
- 1) In such a proceeding, NMDOT bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards of 49 CFR Part 26.
 - 2) NMDOT will maintain a complete record of the hearing by any means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to USDOT, NMDOT will provide a transcript of the hearing to USDOT and, on request, to the firm. NMDOT will retain the original record of the hearing. NMDOT may charge the firm only for the cost of copying the record.
 - 3) The firm may elect to present information and arguments in writing, without going to a hearing. The firm should forward such information and/or arguments to the NMDOT Certification Officer. In such a situation, NMDOT bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as would be the case during a hearing.
- E. NMDOT will ensure that the decision in a proceeding to remove the firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. NMDOT's methods of implementing this requirement are as follows:
- 1) The Hearing Officer shall be a designee of the Secretary of NMDOT who is not assigned to the CCRB.
 - 2) The decision-maker shall be an individual who is knowledgeable about the certification requirements of the NMDOT DBE Program.
- F. NMDOT may base a decision to remove a firm's eligibility only on one or more of the following grounds:
- 1) Changes in the firm's circumstances since the certification of the firm by NMDOT that render the firm unable to meet the eligibility standards of this part;
 - 2) Information or evidence not available to NMDOT at the time the firm was certified;
 - 3) Information relevant to eligibility that was concealed or misrepresented by the firm;
 - 4) A change in the certification standards or requirements by USDOT;

- 5) NMDOT's decision to certify the firm was clearly erroneous;
- 6) The firm has failed to cooperate with NMDOT (see §26.109(c));
- 7) The firm has exhibited a pattern of conduct indicating its involvement in attempts to subvert the intent or requirements of the DBE program (see §26.73(a)(2)); or
- 8) The firm has been suspended or debarred for conduct related to the DBE program. The notice required by paragraph G of this section must include a copy of the suspension or debarment action. A decision to remove a firm for this reason shall not be subject to the hearing procedures in paragraph D of this section.

G. Regarding notice of decisions:

NMDOT will provide the firm with a written notice of the decision and the reason for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of NMDOT's decision and of the availability of an appeal to USDOT. NMDOT must send copies of the notice to the complainant in an ineligibility complaint or to the USDOT (concerned operating administration) that directed NMDOT to initiate the proceeding. Provided that, when sending such notice to a complainant other than a USDOT operating administration, NMDOT will not include information reasonably construed as confidential business information without the written consent of the firm that submitted the information.

H. Status of the Firm During Proceeding:

- 1) A firm remains an eligible DBE during the pendency of NMDOT's proceeding to remove its eligibility.
- 2) The firm does not become ineligible until the issuance of the notice of decision.

I. When NMDOT removes a firm's eligibility, the following action will be taken:

- 1) When a prime contractor has made a commitment to using the ineligible firm, or NMDOT has made a commitment to using a DBE prime contractor, but a subcontractor or contract has not been executed before NMDOT issues the decertification notice, the ineligible firm does not count toward any contract goal or the overall state goal. NMDOT must direct the prime contractor to meet any contract goal with an eligible DBE firm or demonstrate to NMDOT that it has made a good faith effort to do so.
- 2) If a prime contractor has executed a subcontract with the firm before NMDOT has notified the firm of its ineligibility, the prime contractor may continue to use the firm on the contract and may continue to receive credit toward its DBE goal for the firm's work. In this case, or in a case where NMDOT has let a prime contract to the DBE that was later ruled ineligible, the portion of the ineligible firm's performance of the contract remaining after the ineligibility notice was issued shall not count toward NMDOT's overall goal, but may count toward any contract goal.
- 3) Exception: If the DBE's ineligibility is caused solely by its having exceeded the size standards during the performance of the contract, NMDOT will continue to count its participation on that contract toward overall and any contract goals.

J. Availability of Appeal:

When NMDOT makes an administratively final removal of a firm's eligibility under this section, the firm may appeal the removal to USDOT under 49 CFR §26.89. Please refer to Section 7 of this chapter for the procedures of this process.

Ref: 49 CFR §26.87

Section 6: Summary of Suspension Certification

- A. NMDOT shall immediately suspend a DBE's certification without adhering to the requirements in §26.87(d) of this part when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.
- B. NMDOT may immediately suspend a DBE's certification without adhering to the requirements in 49 CFR §26.87(d) when there is adequate evidence to believe that there has been a material change in circumstance that may affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify NMDOT in writing of any material change in circumstances as required by 49 CFR §26.83(i) or fails to timely file an affidavit of no change under 49 CFR §26.83(j). In determining the adequacy of the evidence to issue a suspension, the NMDOT shall consider all relevant factors, including how much information is available, the credibility of the information and allegations given the circumstances, whether or not important allegations are corroborated, and what interferences can reasonably be drawn as a result.
- C. The concerned operating administration may direct NMDOT to take action pursuant to paragraph (A) and (B) of this section if it determines that information available to it is sufficient to warrant immediate suspension.
- D. When a firm is suspended pursuant to paragraph (A) and (B) of this section, NMDOT shall immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.
- E. Suspension is a temporary status of ineligibility pending an expedited show cause hearing/proceeding under 49 CFR §26.87 to determine whether the DBE is eligible to participate in the program and consequently should be removed. The suspension takes effect when the DBE receives, or is deemed to have received, the Notice of Suspension.
- F. While suspended, the DBE may not be considered to meet a contract goal on a new contract, and any work it does on a contract received during the suspension shall not be counted towards NMDOT's overall goal. The DBE may continue to perform under an existing contract executed before the DBE received a Notice of Suspension and may be counted toward the contract goal during the period of suspension as long as the DBE is performing a commercially useful function under the existing contract.
- G. Following the receipt of the Notice of Suspension, if the DBE believes it is no longer eligible, it may voluntarily withdraw from the program, in which case no further action is required. If the DBE believes its eligibility should be reinstated, it must provide NMDOT information demonstrating that the firm is eligible notwithstanding it changed circumstances. Within 30 days of receiving this information, NMDOT must either lift the suspension and reinstate the firm's certification or

commence a decertification action under 49 CFR §26.87. If NMDOT commences a decertification proceeding, the suspension remains in effect during the proceeding.

- H. The decision to immediately suspend a DBE under paragraph (A) or (B) of this section is not appealable to USDOT. The failure of NMDOT to either lift the suspension and reinstate the firm or commence a decertification proceeding, as required by paragraph (G) of this section, is appealable to USDOT under 49 CFR §26.89, as a constructive decertification.

Ref: 49 CFR §26.88

Section 7: Appealing Certification Decisions to USDOT

A. A Firm Denied Certification:

- 1) A firm that is denied certification, or whose eligibility is removed by NMDOT, including SBA-certified firms, may make an administrative appeal to USDOT.
- 2) A complainant in an ineligibility complaint (including the concerned operating administration in the circumstances provided in 49 CFR §26.87(C)), may appeal to USDOT if NMDOT does not find reasonable cause to propose removing the firm's eligibility or, following a removal of eligibility proceeding, determines that the firm is eligible.

3) Appeals should be sent to the following address:

U.S. Department of Transportation
Departmental Office of Civil Rights
1200 New Jersey Avenue, SE
Washington, DC 20590-0001

- B. Pending USDOT's decision in the matter, NMDOT's decision remains in effect. USDOT does not stay the effect of NMDOT's decision while it is considering the appeal.
- C. Such appeals must be in writing to USDOT within 90 days of the date of NMDOT's final decision and must include information and arguments concerning why the recipient's decision was erroneous, what significant fact that the NMDOT failed to consider, or what provisions of this part the NMDOT did not properly apply. USDOT may accept an appeal filed later than 90 days after the date of the decision if USDOT determines that there was good cause for the late filing of the appeal.
- D. When it receives an appeal, USDOT requests a copy of the recipient's complete administrative record in the matter. If NMDOT is the recipient, NMDOT must provide the administrative record within 20 days of USDOT's request. USDOT may extend this time period on the basis of a recipient's showing of good cause. To facilitate USDOT's review of a recipient's decision, NMDOT must ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to NMDOT to be corrected immediately. If an appeal is brought concerning one recipient's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.
- E. USDOT makes its decision based solely on the entire administrative record. USDOT does not make a de novo review of the matter and does not conduct a hearing. USDOT may supplement the administrative record by adding relevant information made available by the USDOT Office of

Inspector General; Federal, state, or local law enforcement authorities; officials of a USDOT operating administration or other appropriate USDOT office; a recipient; or a firm or other private party.

- F. As a recipient, when NMDOT provides supplementary information to USDOT, NMDOT shall also make this information available to the firm and any third-party complainant involved, consistent with Federal or applicable state laws concerning freedom of information and privacy. USDOT makes available, on request by the firm and any third-party complainant involved, any supplementary information it receives from any source.
- 1) USDOT affirms NMDOT's decision unless it determines, based on the entire administrative record, that NMDOT's decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provision of this part concerning certification.
 - 2) If USDOT determines, after reviewing the entire administrative record, that NMDOT's decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions of this part concerning certification, USDOT reverses NMDOT's decision and directs NMDOT to certify the firm or remove its eligibility, as appropriate. NMDOT must take the action directed by USDOT's decision immediately upon receiving written notice of it.
 - 3) USDOT is not required to reverse NMDOT's decision if USDOT determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.
 - 4) If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, USDOT may remand the record to NMDOT with instructions seeking clarification or augmentation of the record before making a finding. USDOT may also remand a case to NMDOT for further proceedings consistent with USDOT instructions concerning the proper application of the provisions of 49 CFR Part 26.
 - 5) USDOT does not uphold NMDOT's decision based on grounds not specified in NMDOT's decision.
 - 6) USDOT's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.
 - 7) USDOT provides written notice of its decision to NMDOT, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding (See Paragraph D above). USDOT will also notify the SBA in writing when it takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for USDOT's decision, including specific references to the evidence in the record that supports each reason for the decision.
 - 8) USDOT's policy is to make its decision within 180 days of receiving the complete administrative record. If USDOT does not make its decision within this period, USDOT provides written notice to concerned parties, including a statement of the reason for the delay and a date by which the appeal decision will be made.
- G. All decisions under this section are administratively final, and are not subject to petitions for reconsideration.

Section 8: Effect of USDOT Certification Appeal Decisions

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

CHAPTER VI – COMPLIANCE AND ENFORCEMENT

Section 1: Compliance Procedures which apply to NMDOT

- A. If NMDOT fails to comply with any requirement of this part, NMDOT may be subject to formal enforcement action under 49 CFR §26.103 or §26.105 or appropriate program sanctions by the concerned OA, such as the suspension or termination of Federal funds, or refusal to approve projects, grants or contracts until deficiencies are remedied. Program sanctions may include, in the case of the FHWA program, actions provided for under 23 CFR §1.36; in the case of the FAA program, actions consistent with 49 U.S.C. 47106(d), 47111(d), and 47122; and in the case of the FTA program, any actions permitted under 49 U.S.C. chapter 53 or applicable FTA program requirements.
- B. As provided in federal statute, NMDOT will not be subject to compliance actions or sanctions for failing to carry out any requirement of 49 CFR Part 26 because NMDOT has been prevented from complying because a federal court has issued a final order in which the court found that the requirement is unconstitutional.

Ref: 49 CFR §26.101

Section 2: Enforcement Actions under FHWA and FTA

- A. Noncompliance complaints. Any person who believes that a recipient has failed to comply with its obligations under this part may file a written complaint with the concerned OA's Office of Civil Rights.
- B. A complaint must be filed no later than 180 days after the date of the alleged violation or the date on which the continuing course of conduct in violation of the DBE Program is discovered. In response to a written request, the USDOT Office of Civil Rights may extend the time for filing in the interest of justice, specifying in writing the reason for so doing. The USDOT Office of Civil Rights may protect the confidentiality of the complainant's identity as provided in 49 CFR §26.109. Complaints under 49 CFR Part 26 are limited to allegations of violations of the provisions of 49 CFR Part 26.
- C. Compliance reviews. The concerned OA may review the recipient's compliance with 49 CFR Part 26 at any time, including reviews of paperwork and on-site reviews, as appropriate. The USDOT Office of Civil Rights may direct the OA to initiate a compliance review based on complaints received.
- D. Reasonable cause notice. If it appears, from the investigation of a complaint or the results of a compliance review, that NMDOT, as a recipient, is in noncompliance with 49 CFR Part 26, the appropriate USDOT office promptly sends NMDOT, return receipt requested, a written notice advising NMDOT that there is reasonable cause to find NMDOT in noncompliance. The notice states the reasons for this finding and directs NMDOT to reply within 30 days concerning whether NMDOT wishes to begin conciliation.
- E. Conciliation:
 - 1) If NMDOT requests conciliation, the appropriate USDOT office shall pursue conciliation for at least 30, but not more than 120, days from the date of NMDOT's request. The appropriate USDOT

office may extend the conciliation period for up to 30 days for good cause, consistent with applicable statutes.

- 2) If NMDOT and the appropriate USDOT office sign a conciliation agreement, then the matter is regarded as closed, and NMDOT is regarded as being in compliance. The conciliation agreement sets forth the measures NMDOT has taken or will take to ensure compliance. While a conciliation agreement is in effect, NMDOT remains eligible for FHWA or FTA financial assistance.
- 3) The concerned OA shall monitor NMDOT's implementation of the conciliation agreement and ensure that its terms are complied with. If NMDOT fails to carry out the terms of a conciliation agreement, NMDOT is in noncompliance.
- 4) If NMDOT does not request conciliation, or a conciliation agreement is not signed within the time provided in paragraph (E)(1) of this section, then enforcement proceedings begin.

F. Enforcement actions.

- 1) Enforcement actions are taken as provided in 49 CFR Part 26.
- 2) Applicable findings in enforcement proceedings are binding on all USDOT offices.

Ref: 49 CFR §26.103

Section 3: Enforcement Actions in FAA Programs

- A. Compliance with all requirements by airport sponsors and other recipients of FAA financial assistance is enforced through the procedures of Title 49 of the United States Code, including 49 U.S.C. 47106(d), 47111(d), and 47122, and regulations implementing them.
- B. The provisions of 49 CFR §26.103(b) and this section apply to enforcement actions in FAA programs.
- C. Any person who knows of a violation of this part by a recipient of FAA funds may file a complaint under 14 CFR Part 16 with the Federal Aviation Administration Office of Chief Counsel.

Ref: 49 CFR §26.105

Section 4: Enforcement Actions for Participants in the DBE Program

- A. If a firm that does not meet the eligibility criteria of Chapter IV of this Manual - DBE Certification Standards, and attempts to participate in NMDOT's DBE Program as a DBE on the basis of false, fraudulent, or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, USDOT may initiate suspension or debarment proceedings against the firm under 2 CFR Parts 180 and 1200.
- B. If a firm, in order to meet DBE contract goals or other DBE program requirements, uses or attempts to use, on the basis of false, fraudulent or deceitful statements or representations or under circumstances indicating a serious lack of business integrity or honesty, another firm that does not meet the eligibility

criteria of Chapter IV of this Manual, USDOT may initiate suspension or debarment proceedings against that firm under 2 CFR Parts 180 and 1200.

- C. In a suspension or debarment proceeding brought under paragraph (A) or (B) of this section, the concerned OA may consider the fact that a purported DBE has been certified by a recipient. Such certification does not preclude USDOT from determining that the purported DBE, or another firm that has used or attempted to use it to meet DBE goals, should be suspended or debarred.
- D. USDOT may take enforcement action under 49 CFR Part 31, Program Fraud and Civil Remedies, against any participant in the DBE program whose conduct is subject to such action under 49 CFR Part 31.
- E. USDOT may refer to the Department of Justice, for prosecution under 18 U.S.C. 1001 or other applicable provisions of law, any person who makes a false or fraudulent statement in connection with participation of a DBE in any program or otherwise violates applicable Federal statutes.

Ref: 49 CFR §26.107

Section 5: Confidentiality, Cooperation, and Intimidation or Retaliation

- A. NMDOT will safeguard from disclosure to third parties information that may reasonably be regarded as confidential business information, consistent with Federal, state, and local law. The Inspection of Public Records Act, NMSA 1978, Chapter 14, Article 2, allows NMDOT to protect certain records from inspection or disclosure, including contractor records that are privileged or confidential information, etc. Notwithstanding any contrary provisions of state or local law, NMDOT will not release personal financial information submitted in response to the personal net worth requirement to a third party (other than USDOT) without the written consent of the submitter.
- B. Availability of records.
 - 1) In responding to requests for information concerning any aspect of the DBE program, USDOT complies with provisions of the Federal Freedom of Information (5 U.S.C. 552) and Privacy Acts (5 U.S.C. 552a). USDOT may make available to the public any information concerning the DBE program release of which is not prohibited by Federal law.
 - 2) Notwithstanding any provisions of Federal or state law, NMDOT will not release information that may reasonably be construed as confidential business information to any third party without the written consent of the firm that submitted the information. This includes applications for DBE certification and supporting documentation. However, NMDOT must transmit this information to USDOT in any certification appeal proceeding under 49 CFR §26.89 or to any other state to which the individual's firm has applied for certification as a DBE.
- C. Confidentiality of information on complainants. Notwithstanding the provisions of paragraph A of this section, the identity of complainants shall be kept confidential, at their election. If such confidentiality will hinder the investigation, proceeding or hearing, or result in a denial of appropriate administrative due process to other parties, the complainant must be advised for the purpose of waiving the privilege. Complainants are advised that, in some circumstances, failure to waive the privilege may result in the

closure of the investigation or dismissal of the proceeding or hearing. FAA follows the procedures of 14 CFR Part 16 with respect to confidentiality of information in complaints.

- D. Cooperation. All participants in the DBE program (including, but not limited to, recipients, DBE firms and applicants for DBE certification, complainants and appellants, and contractors using DBE firms to meet contract goals) are required to cooperate fully and promptly with USDOT and recipient compliance reviews, certification reviews, investigations, and other requests for information. Failure to do so shall be a ground for appropriate action against the party involved (e.g., with respect to recipients, a finding of noncompliance; with respect to DBE firms, denial of certification or removal of eligibility and/or suspension and debarment; with respect to a complainant or appellant, dismissal of the complaint or appeal; with respect to a contractor which uses DBE firms to meet goals, findings of non-responsibility for future contracts and/or suspension and debarment).
- E. Intimidation and retaliation. Recipients, contractors, or any other participants in the program must not intimidate, threaten, coerce, or discriminate against any individual or firm for the purpose of interfering with any right or privilege secured by 49 CFR Part 26, or because the individual or firm has made a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under 49 CFR §26.109. Violations of this prohibition constitute noncompliance with 49 CFR Part 26.

Ref: 49 CFR §26.109



Appendix A

NEW MEXICO DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM POLICY STATEMENT

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

It is the policy of NMDOT to ensure that DBEs, as defined in 49 CFR Part 26, have an equal opportunity to receive and participate in USDOT-assisted contracts. In furtherance of the spirit and intent of 49 CFR Part 26, NMDOT also adopts the following policies and objectives:

- To ensure nondiscrimination in the award and administration of USDOT-assisted contracts;
- To create a level playing field on which DBEs can compete fairly for USDOT-assisted contracts;
- To ensure that the DBE Program is narrowly tailored in accordance with applicable law;
- To ensure that only firms that fully meet 49 CFR Part 26 eligibility standards are permitted to participate as DBEs;
- To help remove barriers to the participation of DBEs in USDOT-assisted contracts;
- To promote the use of DBEs in all types of federally-assisted contracts and procurement activities; and
- To assist the development of firms that can compete successfully in the marketplace outside the DBE Program.

The Construction and Civil Rights Bureau's Compliance Manager is designated as NMDOT's DBE Liaison Officer. In that capacity, the Director 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 NMDOT in its financial assistance agreements with USDOT.

This policy statement shall be disseminated throughout NMDOT and to DBE and non-DBE business communities that perform work on USDOT-assisted contracts. This policy statement is also available on the NMDOT website.

Original Signed by Secretary Church
Tom Church
Cabinet Secretary

3/23/15
Date



Appendix B

Form A-1239
Rev. 04/15 CCRB



NMDOT DBE COMMERCIALLY USEFUL FUNCTION (CUF) INTERVIEW and ASSESSMENT

Part A (Completed by the Field Inspector)		Agency Staff Conducting Interview and Completing Form	
Project No. / Control No.:		Field Staff Member:	
Project Location/Termini:		Office Staff Member:	
		Project Manager:	
		District:	Interview Date:
DBE Subcontractor:			
Prime Contractor:			
Part B (Completed by the Field Inspector) DESCRIBE THE DBE SCOPE OF WORK			
Describe Work Being Performed Today:		DBE Start Date: DBE Estimated Completion Date:	
Work Item Number (Continue on Back of Form)	Work Item Description (Observed Work Performed)	Approximate % Complete as of This Date	Subcontracted Dollar Amount
Part C (Completed by the Field Inspector) REGARDING DBE'S FOREMAN/SUPT.			
Name of DBE's foreman/superintendent: _____			
Is the foreman/superintendent exclusively employed by DBE? Yes No			
Who does the foreman/superintendent directly reports to: _____			
<u>REGARDING DBE'S EMPLOYEES</u>			
Name of the DBE employees working Today: _____			

Do the DBE's employees receive work assignments from DBE Foreman / Supt? Yes No			
-----Below Completed by NMDOT or LPA Project or Office Manager Only-----			
Is the foreman exclusively employed by the DBE? Yes No			
Is the foreman shown on the DBE's payroll? Yes No			
Is the foreman shown on any other Firm's payroll? Yes No			
Are the DBE's employees shown on any other contractor's payroll on this contract? Yes No			
If yes, whose? _____			
Are DBE's employees shown on the payrolls on this contract? Yes No			

REGARDING DBE'S EQUIPMENT (Part C, continued, Completed by the Field Inspector)

Listing of DBE Major Equipment On-Site Today: _____

Does the equipment have the DBE's name or logo? Yes No
If another firm's name or logo is shown, identify: _____
Does the equipment belong to the DBE? Yes, No, Leased

-----Below-Completed by -NMDOT or LPA Project or Office Manager Only -----

If leased or rented, is there a copy of the lease or rental agreement in project file? Yes No N/A

REGARDING DBE'S WORK PERFORMANCE (Completed by the Field Inspector)

Has any other contractor performed work that was to be performed by the DBE? Yes No
If yes, identify the contractor who performed the work: _____
What work items did the identified contractor perform? _____
Were these items on the DBE's subcontract? Yes No
Has the DBE owner been present on the job site? Yes No
Does the DBE appear to have control over the other contractor's employees and the work done? Yes No

Part D PROJECT MANAGER DETERMINATION (Completed by the Project Manager only)

Based on knowledge of the DBE work activities on the project and information contained herein, I believe the DBE firm listed above (circle one) **is is not** performing a Commercially Useful Function on this project. If it is believed the DBE Firm is not performing a CUF on this project, contact the CCRB section for further guidance.

Project Manager_____
Date

NOTE: Definition - Commercially Useful Function - A DBE subcontractor performs a Commercially Useful Function when it is responsible for execution of a distinct element of work on a contract or subcontract and carries out its responsibilities by actually performing, managing and supervising the work involved.

PM Comments: _____

Part E Additional Field Inspector Comments

Comments: _____

Distribution: Original to Project DBE File, Copy to Prime Contractor, (or District Local Government's Coordinator if LPA Project)

COMMERCIALLY USEFUL FUNCTION (CUF) – FHWA 49CFR26.55

Department Form A-1239 Instructions:

The CUF Form A-1239 should be completed at least once for each DBE working on the project. Please refer to the following information for guidance in completing the Form.

A DBE SUBCONTRACTOR MUST PERFORM A CUF IN ORDER TO BE COUNTED TOWARDS THE DBE CONTRACT GOAL

The following provides guidance on the criteria for determination of Commercially Useful Function. Keep this in mind when interviewing the DBE Subcontractor and filling out the Form. A DBE Subcontractor must:

MANAGE:

Manage the work themselves.

- Schedule work operations, order equipment and materials, hire and fire employees, including supervisory employees.

SUPERVISE:

Supervise daily operations

- Can use a skilled superintendent or foreman employed by the DBE.

PERFORM:

Perform the work stated in the contract or subcontract with their own equipment.

- **Regular Equipment** is owned or leased and operated on a long term agreement and not on an *ad hoc* or contract by contract agreement.
 - a. The equipment would be used by the DBE firm on any other subcontract with any other contractor.
 - b. The equipment would be owned by the DBE firm. Or
The equipment would be leased/rented from traditional equipment lease/rental sources.
 - c. The DBE firm would have a rental/lease agreement for any rented or leased equipment.
 - d. The equipment cannot belong to:
 - (1.) Prime Contractor
 - (2.) Another subcontractor on the present project.
 - (3.) Supplier of materials being installed by the DBE firm.
 - e. The equipment cannot come from another contractor fully operated meaning equipment + operator

Perform the work with their own employees.

- **Regular Employee** is a person who:
 - a. Would be working for the DBE firm on any other subcontract with any other contractor.
 - b. Is a permanent employee of the DBE firm, or has been recruited through the traditional recruitment and/or employment centers.
 - c. Has not recently been employed by the prime contractor on the present project, another subcontractor on the present project, or the renter-lessor of equipment being used on the present project.
 - d. Is not a member of a construction crew, which regularly works for a non-DBE.
 - e. Is not a licensed contractor who is at the time "unemployed" or "between jobs"

Subcontracting part of the work of the contract.

- When a DBE subcontracts part of the work of its contract to another firm, the value of the subcontracted work may be counted toward the DBE goal **only if the DBE subcontractor is itself a DBE**. Work that a DBE subcontracts to a non-DBE firm does not count toward DBE goals.

Trucks/Equipment must display name of DBE firm

- Printed name or logo

Instructions:

Much of the form can be completed by the field inspector with minimal interaction with the DBE Subcontractor. The field inspector will need to interview the DBE Subcontractor Foreman for specific questions regarding work activity, crew and equipment.

Field Inspector

- Part A - The field inspector or PM designee should complete Part A of the Form. Print your name as Field Staff Member and the date of the interview.
- Part B - Describe the general scope of the DBE subcontractor work. Use the backside of the form if more space is needed. Describe the work being performed on the date of the interview. DBE start date, estimated completion date and Subcontract Amount may need to be filled in by the office manager.
- Part C - Fill in the information requested. Interview the DBE foreman for any information needed to fill out this part.

Office Staff

- Complete remaining portions of the form that require payroll verification or subcontract information.

Project Manager

- Complete Part D
- Notify CCRB should there be any concerns regarding Commercially Useful Function



NMDOT DBE PROGRAM MANUAL

APPENDIX C – GUIDANCE CONCERNING GOOD FAITH EFFORTS

(Ref: Appendix A to 49 CFR 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 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, it is up to you 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 DBE 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 employee 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 constructed 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 may take into account the performance of other bidders in meeting the contract. For example, when the apparent successful bidder fails to meet the contract goal, but others meet it, you may reasonably raise the question of whether, with additional reasonable efforts, the apparent successful bidder could have met the goal. If the apparent successful bidder fails to meet the goal, but meets or exceeds the average DBE participation obtained by other bidders, 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 the 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 this 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.



Appendix D

	U.S. Department of Transportation Personal Net Worth Statement For DBE/ACDBE Program Eligibility As of _____	OMB APPROVAL NO: EXPIRATION DATE:			
<p>This form is used by all participants in the U.S. Department of Transportation's Disadvantaged Business Enterprise (DBE) Programs. Each individual owner of a firm applying to participate as a DBE or ACDBE, whose ownership and control are relied upon for DBE certification must complete this form. Each person signing this form authorizes the Unified Certification Program (UCP) recipient to make inquiries as necessary to verify the accuracy of the statements made. The agency you apply to will use the information provided to determine whether an owner is economically disadvantaged as defined in the DBE program regulations 49 C.F.R. Parts 23 and 26. Return form to appropriate UCP certifying member, not U.S. DOT.</p>					
Name		Business Phone			
Residence Address (As reported to the IRS) City, State and Zip Code		Residence Phone			
Business Name of Applicant Firm					
Spouse's Full Name (Marital Status: Single, Married, Divorced, Union)					
ASSETS	(Omit Cents)	LIABILITIES			
Cash and Cash Equivalents	\$	Loan on Life Insurance (Complete Section 5)			
Retirement Accounts (IRAs, 401Ks, 403Bs, Pensions, etc.) (Report full value minus tax and interest penalties that would apply if assets were distributed today) (Complete Section 3)	\$	Mortgages on Real Estate Excluding Primary Residence Debt (Complete Section 4)			
Brokerage, Investment Accounts	\$	Notes, Obligations on Personal Property (Complete Section 6)			
Assets Held in Trust	\$	Notes & Accounts Payable to Banks and Others (Complete Section 2)			
Loans to Shareholders & Other Receivables (Complete section 6)	\$	Other Liabilities (Complete Section 8)			
Real Estate Excluding Primary Residence (Complete Section 4)	\$	Unpaid Taxes (Complete Section 8)			
Life Insurance (Cash Surrender Value Only) (Complete Section 5)	\$				
Other Personal Property and Assets (Complete Section 6)	\$				
Business Interests Other Than the Applicant Firm (Complete Section 7)	\$				
Total Assets	\$	Total Liabilities			
		NET WORTH			
Section 2. Notes Payable to Banks and Others					
Name of Noteholder(s)	Original Balance	Current Balance	Payment Amount	Frequency (monthly, etc.)	How Secured or Endorsed Type of Collateral

Section 3. Brokerage and custodial accounts, stocks, bonds, retirement accounts. (Full Value) (Use attachments if necessary).				
Name of Security / Brokerage Account / Retirement Account	Cost	Market Value Quotation/Exchange	Date of Quotation/Exchange	Total Value

Section 4. Real Estate Owned (Including Primary Residence, Investment Properties, Personal Property Leased or Rented for Business Purposes, Farm Properties, or any Other Income Producing property). (List each parcel separately. Add additional sheets if necessary).			
	Primary Residence	Property B	Property C
Type of Property			
Address			
Date Acquired and Method of Acquisition (purchase, inherit, divorce, gift, etc.)			
Names on Deed			
Purchase Price			
Present Market Value			
Source of Market Valuation			
Name of all Mortgage Holders			
Mortgage Acc. # and balance (as of date of form)			
Equity line of credit balance			
Amount of Payment Per Month/Year (Specify)			

Section 5. Life Insurance Held (Give face amount and cash surrender value of policies, name of insurance company and beneficiaries).				
Insurance Company	Face Value	Cash Surrender Amount	Beneficiaries	Loan on Policy Information

Section 6. Other Personal Property and
Type of Property
Automobiles and Vehicles (including recreational vehicles, boats, etc.) include personally owned vehicles, boats, etc. owned by businesses or other individuals.
Household Goods / Jewelry
Other (List)
Accounts and Notes Receivables
Section 7. Value of Other Business Investments: Sole Proprietorships, General Partners, Joint Ventures, etc.
Section 8. Other Liabilities and Unpaid
Section 9. Transfer of Assets: Have you transferred any assets to a partner, relative, or entity in which you have an interest?
I declare under penalty of perjury that the information submitted in this application is true and correct. I certify that no assets have been transferred to a partner, relative, or entity in which I have an interest. I authorize such agency to use the information for the purpose of determining the named firm's eligibility. I agree that any false or misleading information or omission in this statement will be grounds for termination of the contract and for initiating action under the Federal Acquisition Regulation (FAR) and the Federal Acquisition Regulation (FAR) and the Federal Acquisition Regulation (FAR).
Signature (DBE/ACDBE Owner)
In collecting the information requested by this form, the DOT is complying with the provisions of the Privacy Act. Your information will not be disclosed to any other agency without your written consent. If you are a participant in the Disadvantaged Business Enterprise (DBE) program, you may wish to review the DOT's complete Privacy Act Statement in the Federal Acquisition Regulation (FAR).



General Instructions for Completing the Personal Net Worth Statement for DBE/ACDBE Program Eligibility

Please do not make adjustments to your figures pursuant to U.S. DOT regulations 49 C.F.R. Parts 23 and 26. The agency that you apply to will use the information provided on your completed Personal Net Worth (PNW) Statement to determine whether you meet the economic disadvantage requirements of 49 C.F.R. Parts 23 and 26. If there are discrepancies or questions regarding your form, it may be returned to you to correct and complete again.

An individual's personal net worth according to 49 C.F.R. Parts 23 and 26 includes only his or her own share of assets held separately, jointly, or as community property with the individual's spouse and excludes the following:

- Individual's ownership interest in the applicant firm;
- Individual's equity in his or her primary residence;
- Tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.

Indicate on the form, if any items are jointly owned. If the personal net worth of the majority owner(s) of the firm exceeds \$1.32 million, as defined by 49 C.F.R. Parts 23 and 26, the firm is not eligible for DBE or ACDBE certification. If the personal net worth of the majority owner(s) exceeds the \$1.32 million cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise that your firm no longer qualifies as a DBE or ACDBE. You must fill out all line items on the Personal Net Worth Statement.

If necessary, use additional sheets of paper to report all information and details. If you have any questions about completing this form, please contact one of the UCP certifying agencies.

Assets

All assets must be reported at their current fair market values as of the date of your statement. *Assessor's assessed value for real estate, for example, is not acceptable.* Assets held in a trust should be included.

Cash and Cash Equivalents: On page 1, enter the total amount of cash or cash equivalents in bank accounts, including checking, savings, money market, certificates of deposit held domestic or foreign. Provide copies of the bank statement.

Retirement Accounts, IRA, 401Ks, 403Bs, Pensions: On page 1, enter the full value minus tax and interest penalties that would apply if assets were distributed as of the date of the form. Describe the number of shares, name of securities, cost market value, date of quotation, and total value in section 3 on page 2.

Brokerage and Custodial Accounts, Stocks, Bonds, Retirement Accounts: Report total value on page 1, and on page 2, section 3, enter the name of the security, brokerage account, retirement account, etc.; the cost; market value of the asset; the date of quotation; and total value as of the date of the PNW statement.

Assets Held in Trust: Enter the total value of the assets held in trust on page 1, and provide the names of beneficiaries and trustees, and other information in Section 6 on page 3.

Loans to Shareholders and Other Receivables not listed: Enter amounts loaned to you from your firm, from any other business entity in which you hold an ownership interest, and other receivables not listed above. Complete Section 6 on page 3.

Real Estate: The total value of real estate excluding your primary residence should be listed on page 1. In section 4 on page 2, please list your primary residence in column 1, including the address, method of acquisition, date of acquired, names of deed, purchase price, present fair market value, source of market valuation, names of all mortgage holders, mortgage account number and balance, equity line of credit balance, and amount of payment. List this information for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial properties, personal property leased or rented for business purposes, farm properties and any other income producing properties, etc. Attach additional sheets if needed.

Life Insurance: On page 1, enter the cash surrender value of this asset. In section 5 on page 2, enter the name of the insurance company, the face value of the policy, cash surrender value, beneficiary names, and loans on the policy.

Other Personal Property and Assets: Enter the total value of personal property and assets you own on page 1. Personal property includes motor vehicles, boats, trailers, jewelry, furniture, household goods, collectibles, clothing, and personally owned vehicles that are leased or rented to businesses or other individuals. In section 6 on page 3, list these assets and enter the present value, the balance of any liabilities, whether the asset is insured, and lien or note information and terms of payments. For accounts and notes receivable, enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm, if those exist. If the asset is insured, you may be asked to provide a copy of the policy. You may also be asked to provide a copy of any liens or notes on the property.

Other Business Interests Other than Applicant Firm: On page 1, enter the total value of your other business investments (excluding the applicant firm). In section 7 on page 3, enter information concerning the businesses you



General Instructions for Completing the Personal Net Worth Statement for DBE/ACDBE Program Eligibility

Please do not make adjustments to your figures pursuant to U.S. DOT regulations 49 C.F.R. Parts 23 and 26. The agency that you apply to will use the information provided on your completed Personal Net Worth (PNW) Statement to determine whether you meet the economic disadvantage requirements of 49 C.F.R. Parts 23 and 26. If there are discrepancies or questions regarding your form, it may be returned to you to correct and complete again.

An individual's personal net worth according to 49 C.F.R. Parts 23 and 26 includes only his or her own share of assets held separately, jointly, or as community property with the individual's spouse and excludes the following:

- Individual's ownership interest in the applicant firm;
- Individual's equity in his or her primary residence;
- Tax and interest penalties that would accrue if retirement savings or investments (e.g., pension plans, Individual Retirement Accounts, 401(k) accounts, etc.) were distributed at the present time.

Indicate on the form, if any items are jointly owned. If the personal net worth of the majority owner(s) of the firm exceeds \$1.32 million, as defined by 49 C.F.R. Parts 23 and 26, the firm is not eligible for DBE or ACDBE certification. If the personal net worth of the majority owner(s) exceeds the \$1.32 million cap at any time after your firm is certified, the firm is no longer eligible for certification. Should that occur, it is your responsibility to contact your certifying agency in writing to advise that your firm no longer qualifies as a DBE or ACDBE. You must fill out all line items on the Personal Net Worth Statement.

If necessary, use additional sheets of paper to report all information and details. If you have any questions about completing this form, please contact one of the UCP certifying agencies.

Assets

All assets must be reported at their current fair market values as of the date of your statement. *Assessor's assessed value for real estate, for example, is not acceptable.* Assets held in a trust should be included.

Cash and Cash Equivalents: On page 1, enter the total amount of cash or cash equivalents in bank accounts, including checking, savings, money market, certificates of deposit held domestic or foreign. Provide copies of the bank statement.

Retirement Accounts, IRA, 401Ks, 403Bs, Pensions: On page 1, enter the full value minus tax and interest penalties that would apply if assets were distributed as of the date of the form. Describe the number of shares, name of securities, cost market value, date of quotation, and total value in section 3 on page 2.

Brokerage and Custodial Accounts, Stocks, Bonds, Retirement Accounts: Report total value on page 1, and on page 2, section 3, enter the name of the security, brokerage account, retirement account, etc.; the cost; market value of the asset; the date of quotation; and total value as of the date of the PNW statement.

Assets Held in Trust: Enter the total value of the assets held in trust on page 1, and provide the names of beneficiaries and trustees, and other information in Section 6 on page 3.

Loans to Shareholders and Other Receivables not listed: Enter amounts loaned to you from your firm, from any other business entity in which you hold an ownership interest, and other receivables not listed above. Complete Section 6 on page 3.

Real Estate: The total value of real estate excluding your primary residence should be listed on page 1. In section 4 on page 2, please list your primary residence in column 1, including the address, method of acquisition, date of acquired, names of deed, purchase price, present fair market value, source of market valuation, names of all mortgage holders, mortgage account number and balance, equity line of credit balance, and amount of payment. List this information for all real estate held. Please ensure that this section contains all real estate owned, including rental properties, vacation properties, commercial properties, personal property leased or rented for business purposes, farm properties and any other income producing properties, etc. Attach additional sheets if needed.

Life Insurance: On page 1, enter the cash surrender value of this asset. In section 5 on page 2, enter the name of the insurance company, the face value of the policy, cash surrender value, beneficiary names, and loans on the policy.

Other Personal Property and Assets: Enter the total value of personal property and assets you own on page 1. Personal property includes motor vehicles, boats, trailers, jewelry, furniture, household goods, collectibles, clothing, and personally owned vehicles that are leased or rented to businesses or other individuals. In section 6 on page 3, list these assets and enter the present value, the balance of any liabilities, whether the asset is insured, and lien or note information and terms of payments. For accounts and notes receivable, enter the total value of all monies owed to you personally, if any. This should include shareholder loans to the applicant firm, if those exist. If the asset is insured, you may be asked to provide a copy of the policy. You may also be asked to provide a copy of any liens or notes on the property.

Other Business Interests Other than Applicant Firm: On page 1, enter the total value of your other business investments (excluding the applicant firm). In section 7 on page 3, enter information concerning the businesses you

hold an ownership interest in, such as sole proprietorships, partnerships, joint ventures, corporations, or limited liability corporations (other than the applicant firm). Do not reduce the value of these entries by any loans from the outside firm to the DBE/ACDBE applicant business.

Liabilities

Mortgages on Real Estate: Enter the total balance on all mortgages payable on real estate on page 1.

Loans on Life Insurance: Enter the total value of all loans due on life insurance policies on page 1, and complete section 5 on page 2.

Notes & Accounts Payable to Bank and Others: On page 1, section 2, enter details concerning any liability, including name of noteholders, original and current balances, payment terms, and security/collateral information. The entries should include automobile installment accounts. This should not, however, include any mortgage balances as this information is captured in section 4. Do not include loans for your business or mortgages for your properties in this section. You may be asked to submit copy of note/security agreement, and the most recent account statement.

Other Liabilities: On page 1, enter the total value due on all other liabilities not listed in the previous entries. In section 8, page 3, report the name of the individual obligated, names of co-signers, description of the liability, the name of the entity owed, the date of the obligation, payment amounts and terms. Note: Do not include contingent liabilities in this section. Contingent liabilities are liabilities that belong to you only if an event(s) should occur. For example, if you

have co-signed on a relative's loan, but you are not responsible for the debt until your relative defaults, that is a contingent liability. Contingent liabilities do not count toward your net worth until they become actual liabilities.

Unpaid Taxes: Enter the total amount of all taxes that are currently due, but are unpaid on page 1, and complete section 8 on page 3. Contingent tax liabilities or anticipated taxes for current year should not be included. Describe in detail the name of the individual obligated, names of co-signers, the type of unpaid tax, to whom the tax is payable, due date, amount, and to what property, if any, the tax lien attaches. If none, state "NONE." You must include documentation, such as tax liens, to support the amounts.

Transfers of Assets:

Transfers of Assets: If you checked the box indicating yes on page 3 in this category, provide details on all asset transfers (within 2 years of the date of this personal net worth statement) to a spouse, domestic partner, relative, or entity in which you have an ownership or beneficial interest including a trust. Include a description of the asset; names of individuals on the deed, title, note or other instrument indicating ownership rights; the names of individuals receiving the assets and their relation to the transferor; the date of the transfer; and the value or consideration received. Submit documentation requested on the form related to the transfer.

Affidavit

Be sure to sign and date the statement. The Personal Net Worth Statement must be notarized



NMDOT DBE PROGRAM MANUAL

APPENDIX E – INDIVIDUAL DETERMINATIONS OF SOCIAL AND ECONOMIC DISADVANTAGE

(Ref: Appendix E to 49 CFR Part 26 - Individual Determinations of Social and Economic Disadvantage)

The following guidance is adapted, with minor modifications, from SBA regulations concerning social and economic disadvantage determinations (see 13 CFR 124.103(c) and 124.104).

Social Disadvantage

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

(A) At least one objective distinguishing feature that has contributed to social disadvantage, such as race, ethnic origin, gender, disability, long-term residence in an environment isolated from the mainstream of American society, or other similar causes not common to individuals who are not socially disadvantaged;

(B) Personal experiences of substantial and chronic social disadvantage in American society, not in other countries; and

(C) Negative impact on entry into or advancement in the business world because of the disadvantage. Recipients will consider any relevant evidence in assessing this element. In every case, however, recipients will consider education, employment and business history, where applicable, to see if the totality of circumstances shows disadvantage in entering into or advancing in the business world.

(1) *Education.* Recipients will consider such factors as denial of equal access to institutions of higher education and vocational training, exclusion from social and professional association with students or teachers, denial of educational honors rightfully earned, and social patterns or pressures which discouraged the individual from pursuing a professional or business education.

(2) *Employment.* Recipients will consider such factors as unequal treatment in hiring, promotions and other aspects of professional advancement, pay and fringe benefits, and other terms and conditions of employment; retaliatory or discriminatory behavior by an employer or labor union; and social patterns or pressures which have channeled the individual into non-professional or non-business fields.

(3) *Business history.* The recipient will consider such factors as unequal access to credit or capital, acquisition of credit or capital under commercially unfavorable circumstances, unequal treatment in opportunities for government contracts or other work, unequal treatment by potential customers and business associates, and exclusion from business or professional organizations.

II. With respect to paragraph I.(A) of this appendix, the Department notes that people with disabilities have disproportionately low incomes and high rates of unemployment. Many physical and attitudinal barriers remain to their full participation in education, employment, and business opportunities available to the general public. The Americans with Disabilities Act (ADA) was passed in recognition of the discrimination faced by people with disabilities. It is plausible that many individuals with disabilities—especially persons with severe disabilities (e.g., significant mobility, vision, or hearing impairments)—may be socially and economically disadvantaged.

III. Under the laws concerning social and economic disadvantage, people with disabilities are not a group presumed to be disadvantaged. Nevertheless, recipients should look carefully at individual showings of disadvantage by

individuals with disabilities, making a case-by-case judgment about whether such an individual meets the criteria of this appendix. As public entities subject to Title II of the ADA, recipients must also ensure their DBE programs are accessible to individuals with disabilities. For example, physical barriers or the lack of application and information materials in accessible formats cannot be permitted to thwart the access of potential applicants to the certification process or other services made available to DBEs and applicants.

Economic Disadvantage

(A) *General.* Economically disadvantaged individuals are socially disadvantaged individuals whose ability to compete in the free enterprise system has been impaired due to diminished capital and credit opportunities as compared to others in the same or similar line of business who are not socially disadvantaged.

(B) *Submission of narrative and financial information.*

(1) Each individual claiming economic disadvantage must describe the conditions which are the basis for the claim in a narrative statement, and must submit personal financial information.

(2) [Reserved]

(C) *Factors to be considered.* In considering diminished capital and credit opportunities, recipients will examine factors relating to the personal financial condition of any individual claiming disadvantaged status, including personal income for the past two years (including bonuses and the value of company stock given in lieu of cash), personal net worth, and the fair market value of all assets, whether encumbered or not. Recipients will also consider the financial condition of the applicant compared to the financial profiles of small businesses in the same primary industry classification, or, if not available, in similar lines of business, which are not owned and controlled by socially and economically disadvantaged individuals in evaluating the individual's access to credit and capital. The financial profiles that recipients will compare include total assets, net sales, pre-tax profit, sales/working capital ratio, and net worth.

(D) *Transfers within two years.*

(1) Except as set forth in paragraph (D)(2) of this appendix, recipients will attribute to an individual claiming disadvantaged status any assets which that individual has transferred to an immediate family member, or to a trust, a beneficiary of which is an immediate family member, for less than fair market value, within two years prior to a concern's application for participation in the DBE program, unless the individual claiming disadvantaged status can demonstrate that the transfer is to or on behalf of an immediate family member for that individual's education, medical expenses, or some other form of essential support.

(2) Recipients will not attribute to an individual claiming disadvantaged status any assets transferred by that individual to an immediate family member that are consistent with the customary recognition of special occasions, such as birthdays, graduations, anniversaries, and retirements.

(3) In determining an individual's access to capital and credit, recipients may consider any assets that the individual transferred within such two-year period described by paragraph (D)(1) of this appendix that are not considered in evaluating the individual's assets and net worth (e.g., transfers to charities).



UNIFORM CERTIFICATION APPLICATION
DISADVANTAGED BUSINESS ENTERPRISE (DBE) /
AIRPORT CONCESSION DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
49 C.F.R. Parts 23 and 26

Roadmap for Applicants

1. Should I apply?

You may be eligible to participate in the DBE/ACDBE program if:

- The firm is a for-profit business that performs or seeks to perform transportation related work (or a concession activity) for a recipient of Federal Transit Administration, Federal Highway Administration, or Federal Aviation Administration funds.
- The firm is at least 51% owned by a socially and economically disadvantaged individual(s) who also controls it.
- The firm's disadvantaged owners are U.S. citizens or lawfully admitted permanent residents of the U.S.
- The firm meets the Small Business Administration's size standard and does not exceed \$23.98 million in gross annual receipts for DBE (\$56.42 million for ACDBEs). (Other size standards apply for ACDBE that are banks/financial institutions, car rental companies, pay telephone firms, and automobile dealers.)

2. How do I apply?

First time applicants for DBE certification must complete and submit this certification application and related material to the certifying agency in your home state and participate in an on-site interview conducted by that agency. The attached document checklist can help you locate the items you need to submit to the agency with your completed application. If you fail to submit the required documents, your application may be delayed and/or denied. Firms already certified as a DBE do not have to complete this form, but may be asked by certifying agencies outside of your home state to provide a copy of your initial application form, supporting documents, and any other information you submitted to your home state to obtain certification or to any other state related to your certification.

3. Where can I send my application? NMDOT OEOP, DBE Certification, 1596 Pacheco St, Ste. 201, Santa Fe, NM 87505

4. Who will contact me about my application and what are the eligibility standards?

The DBE and ACDBE Programs require that all U.S. Department of Transportation (DOT) recipients of federal assistance participate in a statewide Unified Certification Program (UCP). The UCP is a one-stop certification program that eliminates the need for your firm to obtain certification from multiple certifying agencies within your state. The UCP is responsible for certifying firms and maintaining a database of certified DBEs and ACDBEs for DOT grantees, pursuant to the eligibility standards found in 49 C.F.R. Parts 23 and 26.

5. Where can I find more information?

U.S. DOT—<https://www.civilrights.dot.gov/> (This site provides useful links to the rules and regulations governing the DBE/ACDBE program, questions and answers, and other pertinent information)

SBA—Small Business Size Standards matched to the North American Industry Classification System (NAICS): <http://www.census.gov/eos/www/naics/> and <http://www.sba.gov/content/table-small-business-size-standards>.

In collecting the information requested by this form, the Department of Transportation (Department) complies with the provisions of the Federal Freedom of Information and Privacy Act (5 U.S.C. 552 and 552a). The Privacy Act provides comprehensive protections for your personal information. This includes how information is collected, used, disclosed, stored, and discarded. Your information will not be disclosed to third parties without your consent. The information collected will be used solely to determine your firm's eligibility to participate in the Department's Disadvantaged Business Enterprise Program as defined in 49 CFR §26.5 and the Airport Concession Disadvantaged Business Enterprise Program as defined in 49 CFR §23.3. You may review DOT's complete Privacy Act Statement in the Federal Register published on April 11, 2000 (65 FR 19477).

Under 49 C.F.R. §26.107, dated February 2, 1999 and January 28, 2011, if at any time, the Department or a recipient has reason to believe that any person or firm has willfully and knowingly provided incorrect information or made false statements, the Department may initiate suspension or debarment proceedings against the person or firm under 2 CFR Parts 180 and 1200, Nonprocurement Suspension and Debarment, take enforcement action under 49 C.F.R. Part 31, Program Fraud and Civil Remedies, and/or refer the matter to the Department of Justice for criminal prosecution under 18 U.S.C. 1001, which prohibits false statements in Federal programs.



**INSTRUCTIONS FOR COMPLETING THE
DISADVANTAGED BUSINESS ENTERPRISE (DBE)
AIRPORT CONCESSIONS DISADVANTAGED BUSINESS ENTERPRISE (ACDBE)
UNIFORM CERTIFICATION APPLICATION**

NOTE: All participating firms must be for-profit enterprises. If your firm is not for profit, then you do NOT qualify for the DBE/ACDBE program and should not complete this application. If you require additional space for any question in this application, please attach additional sheets or copies as needed, taking care to indicate on each attached sheet/copy the section and number of this application to which it refers.

Section 1: CERTIFICATION INFORMATION

A. Basic Contact Information

- (1) Enter the contact name and title of the person completing this application and the person who will serve as your firm's contact for this application.
- (2) Enter the legal name of your firm, as indicated in your firm's Articles of Incorporation or charter.
- (3) Enter the primary phone number of your firm.
- (4) Enter a secondary phone number, if any.
- (5) Enter your firm's fax number, if any.
- (6) Enter the contact person's email address.
- (7) Enter your firm's website addresses, if any.
- (8) Enter the street address of the firm where its offices are physically located (not a P.O. Box).
- (9) Enter the mailing address of your firm, if it is different from your firm's street address.

B. Prior/Other Certifications and Applications

- (10) Check the appropriate box indicating whether your firm is currently certified in the DBE/ACDBE programs, and provide the name of the certifying agency that certified your firm. List the dates of any site visits conducted by your home state and any other states or UCP members. Also provide the names of state/UCP members that conducted the review.
- (11) Indicate whether your firm or any of the persons listed has ever been denied certification as a DBE, 8(a), or Small Disadvantaged Business (SDB) firm, or state and local MBE/WBE firm. Indicate if the firm has ever been decertified from one of these programs. Indicate if the application was withdrawn or whether the firm was debarred, suspended, or otherwise had its bidding privileges denied or restricted by any state or local agency, or Federal entity. If your answer is yes, identify the name of the agency, and explain fully the nature of the action in the space provided. Indicate if you have ever appealed this decision to the Department and if so, attach a copy of USDOT's final agency decision(s).

Section 2: GENERAL INFORMATION

A. Business profile:

- (1) Give a concise description of the firm's primary activities, the product(s) or services the company provides, or type of construction. If your company offers more than one product/service, list primary product or service first (attach additional sheets if necessary). This description may be used in our UCP online directory if you are certified as a DBE.

- (2) If you know the appropriate NAICS Code for the line(s) of work you identified in your business profile, enter the codes in the space provided.
- (3) State the date on which your firm was established as stated in your firm's Articles of Incorporation or charter.
- (4) State the date each person became a firm owner.
- (5) Check the appropriate box describing the manner in which you and each other owner acquired ownership of your firm. If you checked "Other," explain in the space provided.
- (6) Check the appropriate box that indicates whether your firm is "for profit." If you checked "No," then you do NOT qualify for the DBE/ACDBE program and should not complete this application. All participating firms must be for-profit enterprises. If the firm is a for profit enterprise, provide the Federal Tax ID number as stated on your firm's Federal tax return.
- (7) Check the appropriate box that describes the type of legal business structure of your firm, as indicated in your firm's Articles of Incorporation or similar document. Identify all joint venture partners if applicable. If you checked "Other," briefly explain in the space provided.
- (8) Indicate in the spaces provided how many employees your firm has, specifying the number of employees who work on a full-time, part-time, and seasonal basis. Attach a list of employees, their job titles, and dates of employment, to your application.
- (9) Specify the firm's gross receipts for each of the past three years, as stated in your firm's filed Federal tax returns. You must submit complete copies of the firm's Federal tax returns for each year. If there are any affiliates or subsidiaries of the applicant firm or owners, you must provide these firms' gross receipts and submit complete copies of these firm(s) Federal tax returns. Affiliation is defined in 49 C.F.R. §26.5 and 13 C.F.R. Part 121.

B. Relationships and Dealings with Other Businesses

- (1) Check the appropriate box that indicates whether your firm is co-located at any of its business locations, or whether your firm shares a telephone number(s), a post office box, any office space, a yard, warehouse, other facilities, any equipment, financing, or any office staff and/or employees with any other business, organization or entity of any kind. If you answered "Yes," then specify the name of the other firm(s) and fully explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or



oral agreement. Provide an explanation of any items shared with other firms in the space provided.

- (2) Check the appropriate box indicating whether any other firm currently has or had an ownership interest in your firm at present or at any time in the past. If you checked yes, please explain.
- (3) Check the appropriate box that indicates whether at present or at any time in the past your firm:
 - (a) ever existed under different ownership, a different type of ownership, or a different name;
 - (b) existed as a subsidiary of any other firm;
 - (c) existed as a partnership in which one or more of the partners are/were other firms;
 - (d) owned any percentage of any other firm; and
 - (e) had any subsidiaries of its own.
- (f) served as a subcontractor with another firm constituting more than 25% of your firm's receipts.

If you answered "Yes" to any of the questions in (3)(a-f), you may be asked to explain the arrangement in detail.

Section 3: MAJORITY OWNER INFORMATION

Identify all individuals or holding companies with any ownership interest in your firm, providing the information requested below (if your firm has more than one owner, provide completed copies of this section for each owner):

A. Identify the majority owner of the firm holding 51% or more ownership interest

- (1) Enter the full name of the owner.
- (2) Enter his/her title or position within your firm.
- (3) Give his/her home phone number.
- (4) Enter his/her home (street) address.
- (5) Indicate this owner's gender.
- (6) Identify the owner's ethnic group membership. If you checked "Other," specify this owner's ethnic group/identity not otherwise listed.
- (7) Check the appropriate box to indicate whether this owner is a U.S. citizen or a lawfully admitted permanent resident. If this owner is neither a U.S. citizen nor a lawfully admitted permanent resident of the U.S., then this owner is NOT eligible for certification as a DBE owner.
- (8) Enter the number of years during which this owner has been an owner of your firm.
- (9) Indicate the percentage of the total ownership this person holds and the date acquired, including (if appropriate), the class of stock owned.
- (10) Indicate the dollar value of this owner's initial investment to acquire an ownership interest in your firm, broken down by cash, real estate, equipment, and/or other investment. Describe how you acquired your business and attach documentation substantiating this investment.

B. Additional Owner Information

- (1) Describe the familial relationship of this owner to each other owner of your firm and employees.
- (2) Indicate whether this owner performs a management or supervisory function for any other business. If you

checked "Yes," state the name of the other business and this owner's function/title held in that business.

- (3) (a) Check the appropriate box that indicates whether this owner owns or works for any other firm(s) that has any relationship with your firm. If you checked "Yes," identify the name of the other business, the nature of the business relationship, and the owner's function at the firm.
(b) If the owner works for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week, please identify this activity.
- (4) (a) Provide the personal net worth of the owner applying for certification in the space provided. Complete and attach the accompanying "Personal Net Worth Statement for DBE/ACDBE Program Eligibility" with your application. Note, complete this section and accompanying statement only for each owner applying for DBE qualification (i.e., for each owner claiming to be socially and economically disadvantaged).
(b) Check the appropriate box that indicates whether any trust has been created for the benefit of the disadvantaged owner(s). If you answered "Yes," you may be asked to provide a copy of the trust instrument.
- (5) Check the appropriate to indicate whether any of your immediate family members, managers, or employees, own, manage, or are associated with another company. Immediate family member is defined in 49 C.F.R. §26.5. If you answered "Yes," provide the name of each person, your relationship to them, the name of the company, the type of business, and whether they own or manage the company.

Section 4: CONTROL

A. Identify the firm's Officers and Board of Directors

- (1) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each officer.
- (2) In the space provided, state the name, title, date of appointment, ethnicity, and gender of each individual serving on your firm's Board of Directors.
- (3) Check the appropriate box to indicate whether any of your firm's officers and/or directors listed above performs a management or supervisory function for any other business. If you answered "Yes," identify each person by name, his/her title, the name of the other business in which s/he is involved, and his/her function performed in that other business.
- (4) Check the appropriate box that indicates whether any of your firm's officers and/or directors listed above own or work for any other firm(s) that has a relationship with your firm. (e.g., ownership interest, shared office space, financial investments, equipment leases, personnel sharing, etc.) If you answered "Yes," identify the name of the firm, the individual's name, and the nature of his/her business relationship with that other firm.



B. Duties of Owners, Officers, Directors, Managers and Key Personnel

(1), (2) Specify the roles of the majority and minority owners, directors, officers, and managers, and key personnel who control the functions listed for the business. Submit résumés for each owner and non-owner identified below. State the name of the individual, title, race and gender and percentage ownership if any. Circle the frequency of each person's involvement as follows: "always, frequently, seldom, or never" in each area.

Indicate whether any of the persons listed in this section perform a management or supervisory function for any other business. Identify the person, business, and their title/function. Identify if any of the persons listed above own or work for any other firm(s) that has a relationship with this firm (e.g. ownership interest, shared office space, financial investment, equipment, leases, personnel sharing, etc.) If you answered "Yes," describe the nature of his/her business relationship with that other firm.

C. Inventory: Indicate firm inventory in these categories:

(1) Equipment and Vehicles

State the make and model, and current dollar value of each piece of equipment and motor vehicle held and/or used by your firm. Indicate whether each piece is either owned or leased by your firm or owner, whether it is used as collateral, and where this item is stored.

(2) Office Space

State the street address of each office space held and/or used by your firm. Indicate whether your firm or owner owns or leases the office space and the current dollar value of that property or its lease.

(3) Storage Space

State the street address of each storage space held and/or used by your firm. Indicate whether your firm or owner owns or leases the storage space and the current dollar value of that property or its lease. Provide a signed lease agreement for each property.

D. Does your firm rely on any other firm for management functions or employee payroll?

Check the appropriate box that indicates whether your firm relies on any other firm for management functions or for employee payroll. If you answered "Yes," you may be asked to explain the nature of that reliance and the extent to which the other firm carries out such functions.

E. Financial / Banking Information

Banking Information. State the name, City and State of your firm's bank. In the space provided, identify the persons able to sign checks on this account. Provide bank authorization and signature cards

Bonding Information. State your firm's bonding limits (in dollars), specifying both the aggregate and project limits.

F. Sources, amounts, and purposes of money loaned to your firm, including the names of persons or firms guaranteeing the loan.

State the name and address of each source, the name of person securing the loan, original dollar amount and the current balance of each loan, and the purpose for which each loan was made to your firm. Provide copies of signed loan agreements and security agreements

G. Contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years:

Indicate in the spaces provided, the type of contribution or asset that was transferred, its current dollar value, the person or firm from whom it was transferred, the person or firm to whom it was transferred, the relationship between the two persons and/or firms, and the date of the transfer.

H. Current licenses/permits held by any owner or employee of your firm.

List the name of each person in your firm who holds a professional license or permit, the type of permit or license, the expiration date of the permit or license, and issuing State of the license or permit. Attach copies of licenses, license renewal forms, permits, and haul authority forms.

I. Largest contracts completed by your firm in the past three years, if any.

List the name of each owner or contractor for each contract, the name and location of the projects under each contract, the type of work performed on each contract, and the dollar value of each contract.

J. Largest active jobs on which your firm is currently working.

For each active job listed, state the name of the prime contractor and the project number, the location, the type of work performed, the project start date, the anticipated completion date, and the dollar value of the contract.

AIRPORT CONCESSION (ACDBE) APPLICANTS

Identify the concession space, address and location at the airport, the value of the property or lease, and fees/lease payments paid to the airport. Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of the concession enterprise.

AFFIDAVIT & SIGNATURE

The Affidavit of Certification must accompany your application for certification. Carefully read the attached affidavit in its entirety. Fill in the required information for each blank space, and sign and date the affidavit in the presence of a Notary Public, who must then notarize the form.

Section 1: CERTIFICATION INFORMATION



A. Basic Contact Information

(1) Contact person and Title: _____ (2) Legal name of firm: _____

(3) Phone #: () _____ - _____ (4) Other Phone #: () _____ - _____ (5) Fax #: () _____ - _____

(6) E-mail: _____ (7) Firm Websites: _____

(8) Street address of firm (No P.O. Box): _____ City: _____ County/Parish: _____ State: _____ Zip: _____

(9) Mailing address of firm (If different): _____ City: _____ County/Parish: _____ State: _____ Zip: _____

B. Prior/Other Certifications and Applications

(10) Is your firm currently certified for any of the following U.S. DOT programs?

☐ DBE ☐ ACDBE Names of certifying agencies: _____

⊗ If you are certified in your home state as a DBE/ACDBE, you do not have to complete this application for other states. Ask your state UCP about the interstate certification process.

List the dates of any site visits conducted by your home state and any other states or UCP members:

Date ____/____/____ State/UCP Member: _____ Date ____/____/____ State/UCP Member: _____

(11) Indicate whether the firm or any persons listed in this application have ever been:

- (a) Denied certification or decertified as a DBE, ACDBE, 8(a), SDB, MBE/WBE firm? ☐ Yes ☐ No
 (b) Withdrawn an application for these programs, or debarred or suspended or otherwise had bidding privileges denied or restricted by any state or local agency, or Federal entity? ☐ Yes ☐ No

If yes, explain the nature of the action. (If you appealed the decision to DOT or another agency, attach a copy of the decision.)

Section 2: GENERAL INFORMATION

A. Business Profile: (1) Give a concise description of the firm's primary activities and the product(s) or service(s) it provides. If your company offers more than one product/service, list the primary product or service first. Please use additional paper if necessary. This description may be used in our database and the UCP online directory if you are certified as a DBE or ACDBE.

(2) Applicable NAICS Codes for this line of work include: _____

(3) This firm was established on ____/____/____ (4) I/We have owned this firm since: ____/____/____

(5) Method of acquisition (Check all that apply):

- ☐ Started new business ☐ Bought existing business ☐ Inherited business ☐ Secured concession
☐ Merger or consolidation ☐ Other (explain) _____

(6) Is your firm "for profit"? ☐ Yes ☐ No →
Federal Tax ID# _____

⊗ STOP! If your firm is NOT for-profit, then you do NOT
qualify for this program and should not fill out this application.



(7) Type of Legal Business Structure: (check all that apply):

- ☐ Sole Proprietorship ☐ Limited Liability Partnership
☐ Partnership ☐ Corporation
☐ Limited Liability Company ☐ Joint Venture (Identify all JV partners _____)
☐ Applying as an ACDBE ☐ Other, Describe _____

(8) Number of employees: Full-time _____ Part-time _____ Seasonal _____ Total _____
(Provide a list of employees, their job titles, and dates of employment, to your application).

(9) Specify the firm's gross receipts for the last 3 years. (Submit complete copies of the firm's Federal tax returns for each year. If there are affiliates or subsidiaries of the applicant firm or owners, you must submit complete copies of these firms' Federal tax returns).

Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____
Year _____	Gross Receipts of Applicant Firm \$ _____	Gross Receipts of Affiliate Firms \$ _____

B. Relationships and Dealings with Other Businesses

(1) Is your firm co-located at any of its business locations, or does it share a telephone number, P.O. Box, office or storage space, yard, warehouse, facilities, equipment, inventory, financing, office staff, and/or employees with any other business, organization, or entity? ☐ Yes ☐ No
If Yes, explain the nature of your relationship with these other businesses by identifying the business or person with whom you have any formal, informal, written, or oral agreement. Also detail the items shared.

(2) Has any other firm had an ownership interest in your firm at present or at any time in the past?
☐ Yes ☐ No If Yes, explain _____

(3) At present, or at any time in the past, has your firm:

- (a) Ever existed under different ownership, a different type of ownership, or a different name? ☐ Yes ☐ No
(b) Existed as a subsidiary of any other firm? ☐ Yes ☐ No
(c) Existed as a partnership in which one or more of the partners are/were other firms? ☐ Yes ☐ No
(d) Owned any percentage of any other firm? ☐ Yes ☐ No
(e) Had any subsidiaries? ☐ Yes ☐ No
(f) Served as a subcontractor with another firm constituting more than 25% of your firm's receipts? ☐ Yes ☐ No

(If you answered "Yes" to any of the questions in (2) and/or (3)(a)-(f), you may be asked to provide further details and explain whether the arrangement continues).



Section 3: MAJORITY OWNER INFORMATION

A. Identify the majority owner of the firm holding 51% or more ownership interest.

(1) Full Name: _____ (2) Title: _____ (3) Home Phone #: _____
() - _____
(4) Home Address (Street and Number): _____ City: _____ State: _____ Zip: _____

(5) Gender: ☐ Male ☐ Female

(6) Ethnic group membership (Check all that apply):

- ☐ Black ☐ Hispanic
☐ Asian Pacific ☐ Native American
☐ Subcontinent Asian
☐ Other (specify) _____

(7) U.S. Citizenship:

- ☐ U.S. Citizen
☐ Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____

(9) Percentage owned: _____ %

Class of stock owned: _____

Date acquired _____

(10) Initial investment to	Type	Dollar Value
acquire ownership	Cash	\$ _____
interest in firm:	Real Estate	\$ _____
	Equipment	\$ _____
	Other	\$ _____

Describe how you acquired your business:

- ☐ Started business myself
☐ It was a gift from: _____
☐ I bought it from: _____
☐ I inherited it from: _____
☐ Other _____

(Attach documentation substantiating your investment)

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

(2) Does this owner perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) ☐ Yes ☐ No

Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? \$ _____

(b) Has any trust been created for the benefit of this disadvantaged owner(s)? ☐ Yes ☐ No

(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ☐ Yes ☐ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage the company: (Please attach extra sheets, if needed): _____

Section 3: OWNER INFORMATION, Cont'd.



A. Identify all individuals, firms, or holding companies that hold LESS THAN 51% ownership interest in the firm (Attach separate sheets for each additional owner)

(1) Full Name: _____ (2) Title: _____ (3) Home Phone #: _____
() - _____
(4) Home Address (Street and Number): _____ City: _____ State: _____ Zip: _____

(5) Gender: ☐ Male ☐ Female

(6) Ethnic group membership (Check all that apply)

- ☐ Black ☐ Hispanic
☐ Asian Pacific ☐ Native American
☐ Subcontinent Asian
☐ Other (specify) _____

(7) U.S. Citizenship:

- ☐ U.S. Citizen
☐ Lawfully Admitted Permanent Resident

(8) Number of years as owner: _____

(9) Percentage owned: _____ %

Class of stock owned: _____

Date acquired _____

(10) Initial investment to acquire ownership	Type	Dollar Value
Interest in firm:	Cash	\$ _____
	Real Estate	\$ _____
	Equipment	\$ _____
	Other	\$ _____

Describe how you acquired your business:

- ☐ Started business myself
☐ It was a gift from: _____
☐ I bought it from: _____
☐ I inherited it from: _____
☐ Other _____

(Attach documentation substantiating your investment)

B. Additional Owner Information

(1) Describe familial relationship to other owners and employees:

(2) Does this owner perform a management or supervisory function for any other business? ☐ Yes ☐ No

If Yes, identify: Name of Business: _____ Function/Title: _____

(3)(a) Does this owner own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) ☐ Yes ☐ No

Identify the name of the business, and the nature of the relationship, and the owner's function at the firm:

(b) Does this owner work for any other firm, non-profit organization, or is engaged in any other activity more than 10 hours per week? If yes, identify this activity: _____

(4)(a) What is the personal net worth of this disadvantaged owner applying for certification? \$ _____

(b) Has any trust been created for the benefit of this disadvantaged owner(s)? ☐ Yes ☐ No

(If Yes, you may be asked to provide a copy of the trust instrument).

(5) Do any of your immediate family members, managers, or employees own, manage, or are associated with another company? ☐ Yes ☐ No If Yes, provide their name, relationship, company, type of business, and indicate whether they own or manage: (Please attach extra sheets, if needed): _____

Section 4: CONTROL



A. Identify your firm's Officers and Board of Directors (If additional space is required, attach a separate sheet):

	Name	Title	Date Appointed	Ethnicity	Gender
(1) Officers of the Company	(a)				
	(b)				
	(c)				
	(d)				
(2) Board of Directors	(a)				
	(b)				
	(c)				
	(d)				

(3) Do any of the persons listed above perform a management or supervisory function for any other business?

☐ Yes ☐ No If Yes, identify for each:

Person: _____ Title: _____
Business: _____ Function: _____

Person: _____ Title: _____
Business: _____ Function: _____

(4) Do any of the persons listed in section A above own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.)

☐ Yes ☐ No If Yes, identify for each:

Firm Name: _____ Person: _____
Nature of Business Relationship: _____

B. Duties of Owners, Officers, Directors, Managers, and Key Personnel

1. (Identify your firm's management personnel who control your firm in the following areas (Attach separate sheets as needed).)

A = Always F = Frequently	S = Seldom N = Never	Majority Owner (51% or more)				Minority Owner (49% or less)			
		Name:	Title:	Percent Owned:		Name:	Title:	Percent Owned:	
		A	F	S	N	A	F	S	N
Sets policy for company direction/scope of operations		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Bidding and estimating		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Major purchasing decisions		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Marketing and sales		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Supervises field operations		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Attend bid opening and lettings		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Perform office management (billing, accounts receivable/payable, etc.)		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hires and fires management staff		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Hire and fire field staff or crew		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Designates profits spending or investment		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Obligates business by contract/credit		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Purchase equipment		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Signs business checks		<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

2. Complete for all Officers, Directors, Managers, and Key Personnel who control the following functions for the firm. (Attach separate sheets as needed).

A = Always S = Seldom F = Frequently N = Never	Officer/Director/Manager/Key Personnel				Officer/Director/Manager/Key Personnel			
	Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____				Name: _____ Title: _____ Race and Gender: _____ Percent Owned: _____			
Sets policy for company direction/scope of operations	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Bidding and estimating	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Major purchasing decisions	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Marketing and sales	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Supervises field operations	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Attend bid opening and lettings	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Perform office management (billing, accounts receivable/payable, etc.)	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Hires and fires management staff	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Hire and fire field staff or crew	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Designates profits spending or investment	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Obligates business by contract/credit	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Purchase equipment	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>
Signs business checks	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>	A <input type="checkbox"/>	F <input type="checkbox"/>	S <input type="checkbox"/>	N <input type="checkbox"/>

Do any of the persons listed in B1 or B2 perform a management or supervisory function for any other business? If Yes, identify the person, the business, and their title/function: _____

Do any of the persons listed above own or work for any other firm(s) that has a relationship with this firm? (e.g., ownership interest, shared office space, financial investments, equipment, leases, personnel sharing, etc.) If Yes, describe the nature of the business relationship: _____

C. Inventory: Indicate your firm's inventory in the following categories (Please attach additional sheets if needed):

1. Equipment and Vehicles

Make and Model	Current Value	Owned or Leased by Firm or Owner?	Used as collateral?	Where is item stored?
1. _____				
2. _____				
3. _____				
4. _____				
5. _____				
6. _____				
7. _____				
8. _____				
9. _____				

2. Office Space

Street Address	Owned or Leased by Firm or Owner?	Current Value of Property or Lease



3. Storage Space (Provide signed lease agreements for the properties listed)

Street Address

Owned or Leased by
Firm or Owner?

Current Value of Property or Lease

D. Does your firm rely on any other firm for management functions or employee payroll? ☐ Yes ☐ No

E. Financial/Banking Information (Provide bank authorization and signature cards)

Name of bank: _____ City and State: _____
The following individuals are able to sign checks on this account: _____

Name of bank: _____ City and State: _____
The following individuals are able to sign checks on this account: _____

Bonding Information: If you have bonding capacity, identify the firm's bonding aggregate and project limits:
Aggregate limit \$ _____ Project limit \$ _____

F. Identify all sources, amounts, and purposes of money loaned to your firm including from financial institutions. Identify whether you the owner and any other person or firm loaned money to the applicant DBE/ACDBE. Include the names of any persons or firms guaranteeing the loan, if other than the listed owner. (Provide copies of signed loan agreements and security agreements).

Name of Source	Address of Source	Name of Person Guaranteeing the Loan	Original Amount	Current Balance	Purpose of Loan
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____

G. List all contributions or transfers of assets to/from your firm and to/from any of its owners or another individual over the past two years (Attach additional sheets if needed):

Contribution/Asset	Dollar Value	From Whom Transferred	To Whom Transferred	Relationship	Date of Transfer
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____

H. List current licenses/permits held by any owner and/or employee of your firm (e.g. contractor, engineer, architect, etc.) (Attach additional sheets if needed):

Name of License/Permit Holder	Type of License/Permit	Expiration Date	State
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____



I. List the three largest contracts completed by your firm in the past three years, if any:

Name of Owner/Contractor	Name/Location of Project	Type of Work Performed	Dollar Value of Contract
1. _____	_____	_____	_____
2. _____	_____	_____	_____
3. _____	_____	_____	_____

J. List the three largest active jobs on which your firm is currently working:

Name of Prime Contractor and Project Number	Location of Project	Type of Work	Project Start Date	Anticipated Completion Date	Dollar Value of Contract
1. _____	_____	_____	_____	_____	_____
2. _____	_____	_____	_____	_____	_____
3. _____	_____	_____	_____	_____	_____

AIRPORT CONCESSION (ACDBE) APPLICANTS ONLY MUST COMPLETE THIS SECTION

Identify the following information concerning the ACDBE applicant firm:

<u>Concession Space</u>	<u>Address / Location at Airport</u>	<u>Value of Property or Lease</u>	<u>Fees/Lease Payments Paid to the Airport</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____

Provide information concerning any other airport concession businesses the applicant firm or any affiliate owns and/or operates, including name, location, type of concession, and start date of concession

<u>Name of Concession</u>	<u>Location</u>	<u>Type of Concession</u>	<u>Start Date of Concession</u>
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____



AFFIDAVIT OF CERTIFICATION

This form must be signed and notarized for each owner upon which disadvantaged status is relied.

A MATERIAL OR FALSE STATEMENT OR OMISSION MADE IN CONNECTION WITH THIS APPLICATION IS SUFFICIENT CAUSE FOR DENIAL OF CERTIFICATION, REVOCATION OF A PRIOR APPROVAL, INITIATION OF SUSPENSION OR DEBARMENT PROCEEDINGS, AND MAY SUBJECT THE PERSON AND/OR ENTITY MAKING THE FALSE STATEMENT TO ANY AND ALL CIVIL AND CRIMINAL PENALTIES AVAILABLE PURSUANT TO APPLICABLE FEDERAL AND STATE LAW.

I _____ (full name printed),
swear or affirm under penalty of law that I am
_____ (title) of the applicant firm

and that I
have read and understood all of the questions in this
application and that all of the foregoing information and
statements submitted in this application and its attachments
and supporting documents are true and correct to the best of
my knowledge, and that all responses to the questions are full
and complete, omitting no material information. The responses
include all material information necessary to fully and
accurately identify and explain the operations, capabilities and
pertinent history of the named firm as well as the ownership,
control, and affiliations thereof.

I recognize that the information submitted in this application is
for the purpose of inducing certification approval by a
government agency. I understand that a government agency
may, by means it deems appropriate, determine the accuracy
and truth of the statements in the application, and I authorize
such agency to contact any entity named in the application, and
the named firm's bonding companies, banking institutions,
credit agencies, contractors, clients, and other certifying
agencies for the purpose of verifying the information supplied
and determining the named firm's eligibility.

I agree to submit to government audit, examination and review
of books, records, documents and files, in whatever form they
exist, of the named firm and its affiliates, inspection of its
places(s) of business and equipment, and to permit interviews
of its principals, agents, and employees. I understand that
refusal to permit such inquiries shall be grounds for denial of
certification.

If awarded a contract, subcontract, concession lease or
sublease, I agree to promptly and directly provide the prime
contractor, if any, and the Department, recipient agency, or
federal funding agency on an ongoing basis, current, complete
and accurate information regarding (1) work performed on the
project; (2) payments; and (3) proposed changes, if any, to the
foregoing arrangements.

I agree to provide written notice to the recipient agency or
Unified Certification Program of any material change in the
information contained in the original application within 30
calendar days of such change (e.g., ownership changes,
address/telephone number, personal net worth exceeding \$1.32
million, etc.).

I acknowledge and agree that any misrepresentations in this
application or in records pertaining to a contract or subcontract
will be grounds for terminating any contract or subcontract
which may be awarded; denial or revocation of certification;
suspension and debarment; and for initiating action under
federal and/or state law concerning false statement, fraud or
other applicable offenses.

I certify that I am a socially and economically disadvantaged
individual who is an owner of the above-referenced firm seeking
certification as a Disadvantaged Business Enterprise or Airport
Concession Disadvantaged Business Enterprise. In support of my
application, I certify that I am a member of one or more of the
following groups, and that I have held myself out as a member of
the group(s): (Check all that apply):

- ☐ Female ☐ Black American ☐ Hispanic American
☐ Native American ☐ Asian-Pacific American
☐ Subcontinent Asian American ☐ Other (specify) _____

I certify that I am socially disadvantaged because I have been
subjected to racial or ethnic prejudice or cultural bias, or have
suffered the effects of discrimination, because of my identity
as a member of one or more of the groups identified above,
without regard to my individual qualities.

I further certify that my personal net worth does not exceed
\$1.32 million, and that I am economically disadvantaged
because my ability to compete in the free enterprise system has
been impaired due to diminished capital and credit
opportunities as compared to others in the same or similar line
of business who are not socially and economically
disadvantaged.

I declare under penalty of perjury that the information
provided in this application and supporting documents is true
and correct.

Signature _____ (Date) _____
(DBE/ACDBE Applicant)

NOTARY CERTIFICATE



UNIFORM CERTIFICATION APPLICATION SUPPORTING DOCUMENTS CHECKLIST

In order to complete your application for DBE or ACDBE certification, you must attach copies of all of the following REQUIRED documents. A failure to supply any information requested by the UCP may result in your firm denied DBE/ACDBE certification.

Required Documents for All Applicants

- ☐ Résumés (that include places of employment with corresponding dates), for all owners, officers, and key personnel of the applicant firm
- ☐ Personal Net Worth Statement for each socially and economically disadvantaged owners comprising 51% or more of the ownership percentage of the applicant firm.
- ☐ Personal Federal tax returns for the past 3 years, if applicable, for each disadvantaged owner
- ☐ Federal tax returns (and requests for extensions) filed by the firm and its affiliates with related schedules, for the past 3 years.
- ☐ Documented proof of contributions used to acquire ownership for each owner (e.g., both sides of cancelled checks)
- ☐ Signed loan and security agreements, and bonding forms
- ☐ List of equipment and/or vehicles owned and leased including VIN numbers, copy of titles, proof of ownership, insurance cards for each vehicle.
- ☐ Title(s), registration certificate(s), and U.S. DOT numbers for each truck owned or operated by your firm
- ☐ Licenses, license renewal forms, permits, and haul authority forms
- ☐ Descriptions of all real estate (including office/storage space, etc.) owned/leased by your firm and documented proof of ownership/signed leases
- ☐ Documented proof of any transfers of assets to/from your firm and/or to/from any of its owners over the past 2 years
- ☐ DBE/ACDBE and SBA 8(a), SDB, MBE/WBE certifications, denials, and/or decertifications, if applicable; and any U.S. DOT appeal decisions on these actions.
- ☐ Bank authorization and signatory cards
- ☐ Schedule of salaries (or other remuneration) paid to all officers, managers, owners, and/or directors of the firm
- ☐ List of all employees, job titles, and dates of employment.
- ☐ Proof of warehouse/storage facility ownership or lease arrangements

Partnership or Joint Venture

- ☐ Original and any amended Partnership or Joint Venture Agreements

Corporation or LLC

- ☐ Official Articles of Incorporation (signed by the state official)
- ☐ Both sides of all corporate stock certificates and your firm's stock transfer ledger
- ☐ Shareholders' Agreement(s)
- ☐ Minutes of all stockholders and board of directors meetings

- ☐ Corporate by-laws and any amendments
- ☐ Corporate bank resolution and bank signature cards
- ☐ Official Certificate of Formation and Operating Agreement with any amendments (for LLCs)

Optional Documents to Be Provided on Request

The UCP to which you are applying may require the submission of the following documents. If requested to provide these document, you must supply them with your application or at the on-site visit.

- ☐ Proof of citizenship
- ☐ Insurance agreements for each truck owned or operated by your firm
- ☐ Audited financial statements (if available)
- ☐ Personal Federal Tax returns for the past 3 years, if applicable, for other disadvantaged owners of the firm.
- ☐ Trust agreements held by any owner claiming disadvantaged status
- ☐ Year-end balance sheets and income statements for the past 3 years (or life of firm, if less than three years)

Suppliers

- ☐ List of product lines carried and list of distribution equipment owned and/or leased



NMDOT DBE PROGRAM MANUAL

APPENDIX G – GUIDANCE OF ADMINISTERING BUSINESS DEVELOPMENT PLANS

(Ref: Appendix C to 49 CFR Part 26 –DBE Business Development Program Guidance)

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

- A. Each firm that participates in a recipient's business development program (BDP) program is subject to a program term determined by the recipient. The term should consist of two stages, a developmental stage and a transitional stage.
- B. In order for a firm to remain eligible for program participation, it must continue to meet all eligibility criteria contained in part 26.
- C. By not later than 6 months of program entry, the participant should develop and submit to the recipient a comprehensive business plan setting forth the participant's business targets, objectives and goals. The participant will not be eligible for program benefits until such business plan is submitted and approved by the recipient. The approved business plan will constitute the participant's short and long term goals and the strategy for developmental growth to the point of economic viability in non-traditional areas of work and/or work outside the DBE program.
- D. The business plan should contain the following:
 - 1) An analysis of market potential, competitive environment and other business analyses estimating the program participant's prospects for profitable operation during the term of program participation and after graduation from the program.
 - 2) An analysis of the firm's strengths and weaknesses, with particular attention paid to the means of correcting any financial, managerial, technical, or labor conditions which could impede the participant from receiving contracts other than those in traditional areas of DBE participation.
 - 3) Specific targets, objectives, and goals for the business development of the participant during the next two years, utilizing the results of the analysis conducted pursuant to paragraphs (C) and (D)(1) of this appendix;
 - 4) Estimates of contract awards from the DBE program and other sources which are needed to meet the objectives and goals for the years covered by the business plan; and
 - 5) Such other information as the recipient may require.
- E. Each participant should annually review its current approved business plan with the recipient and modify the plan as may be appropriate to account for any changes in the firm's structure and redefined needs. The current approved plan should be considered the applicable plan for all program purposes until the recipient approves in writing a modified plan. The recipient should establish an anniversary date for review of the participant's business plan and contract forecasts.
- F. Each participant should annually forecast in writing its needs for contract awards for the next program year and the succeeding program year during the review of its business plan conducted under paragraph (E) of this appendix. Such forecast should be included in the participant's business plan. The forecast should include:
 - 1) The aggregate dollar value of contract opportunities being sought under the DBE program, reflecting compliance with the business plan;

- 2) The aggregate dollar value of contracts to be sought in areas other than traditional areas of DBE participation;
 - 3) The types of contract opportunities being sought, based on the firm's primary line of business; and
 - 4) Such other information as may be requested by the recipient to aid in providing effective business development assistance to the participant.
- G. Program participation is divided into two stages; (1) a developmental stage and (2) a transitional stage. The developmental stage is designed to assist participants to overcome their social and economic disadvantage by providing such assistance as may be necessary and appropriate to enable them to access relevant markets and strengthen their financial and managerial skills. The transitional stage of program participation follows the developmental stage and is designed to assist participants to overcome, insofar as practical, their social and economic disadvantage and to prepare the participant for leaving the program.
- H. The length of service in the program term should not be a pre-set time frame for either the developmental or transitional stages but should be figured on the number of years considered necessary in normal progression of achieving the firm's established goals and objectives. The setting of such time could be factored on such items as, but not limited to, the number of contracts, aggregate amount of the contract received, years in the business, growth potential, etc.
- I. Beginning in the first year of the transitional stage of program participation, each participant should annually submit for inclusion in its business plan a transition management plan outlining specific steps to promote profitable business operations in areas other than traditional areas of DBE participation after graduation from the program. The transitional management plan should be submitted to the recipient at the same time other modifications are submitted pursuant to the annual review under paragraph (E) of this section. The plan should set forth the same information as required under paragraph (F) of steps the participant will take to continue its business development after the expiration of its program term.
- J. When a participant is recognized as successfully completing the program by substantially achieving the targets, objectives and goals set forth in its program terms, and has demonstrated the ability to compete in the marketplace, its further participation within the program may be determined by the recipient.
- K. In determining whether a concern has substantially achieved the goals and objectives of its business plan, the following factors, among others, should be considered by the recipient:
- 1) Profitability;
 - 2) Sales, including improved ratio of non-traditional contracts to traditional-type contracts;
 - 3) Net worth, financial ratios, working capital, capitalization, access to credit and capital;
 - 4) Ability to obtain bonding;
 - 5) A positive comparison of the DBE's business and financial profile with profiles of non-DBE businesses in the same area or similar business category; and
 - 6) Good management capacity and capability.
- L. Upon determination by the recipient that the participant should be graduated from the developmental program, the recipient should notify the participant in writing of its intent to graduate the firm in a letter of notification. The letter of notification should set forth findings, based on the facts, for every material issue relating to the basis of the program graduation with specific reasons for each finding. The letter of notification should also provide the participant 45 days from the date of service of the letter to submit in writing information that would explain why the proposed basis of graduation is not warranted.
- M. Participation of a DBE firm in the program may be discontinued by the recipient prior to expiration of the firm's program term for good cause due to failure of the firm to engage in business practices that will promote its competitiveness within a reasonable period of time as evidenced by, among other indicators, a pattern of

inadequate performance or unjustified delinquent performance. Also, the recipient can discontinue the participation of a firm that does not actively pursue and bid on contracts, and a firm that, without justification, regularly fails to respond to solicitations in the type of work it is qualified for and in the geographical areas where it has indicated availability under its approved business plan. The recipient should take such action if over a 2-year period a DBE firm exhibits such a pattern.



NMDOT DBE PROGRAM MANUAL APPENDIX H – OPERATION OF MENTOR-PROTÉGÉ PROGRAM GUIDELINES

(Ref: Appendix D to 49 CFR Part 26 –Mentor-Protégé Program Guidelines)

- A. The purpose of this program element is to further the development of DBEs, including but not limited to assisting them to move into non-traditional areas of work and/or compete in the marketplace outside the DBE program, via the provision of training and assistance from other firms. To operate a mentor-protégé program, a recipient must obtain the approval of the concerned operating administration.

- B. (1) Any mentor-protégé relationship shall be based on a written development plan, approved by the recipient, which clearly sets forth the objectives of the parties and their respective roles, the duration of the arrangements and the services and resources to be provided by the mentor to the protégé. The formal mentor-protégé agreement may be a fee schedule to cover the direct and indirect cost for such services rendered by the mentor for specific training and assistance to the protégé through the life of the agreement. Services provided by the mentor may be reimbursed under the FTA, FHWA, and FAA programs.

(2) To be eligible for reimbursement, the mentor services provided and associated must be directly attributable and properly allowable to specific individual contracts. The recipient may establish a line item for the mentor to quote the portion of the fee schedule expected to be provided during the life of the contract. The amount claimed shall be verified by the recipient and paid on an incremental basis representing the time the protégé is working on the contract. The total individual contract figures accumulated over the life of the agreement shall not exceed the amount stipulated in the original mentor/protégé agreement.

- C. DBEs involved in mentor-protégé agreement must be independent business entities which meet the requirements for certification as defined in subpart D of this part. A protégé firm must be certified *before* it begins participation in a mentor-protégé arrangement. If the recipient chooses to recognize mentor/protégé agreements, it should establish formal general program guidelines. These guidelines must be submitted to the operating administration for approval prior to the recipient executing an individual contractor/subcontractor mentor-protégé agreement.



Appendix I

Form No. A-685A

DBE A-1

Rev. 10/18/10

**New Mexico Department of Transportation
RACE CONSCIOUS MEASURE PROJECT
CONTRACT GOAL FOR DISADVANTAGED BUSINESS ENTERPRISE PROGRAM
IN HIGHWAY CONSTRUCTION**

For the purpose of this contract, a goal of «db est» percent has been established for certified Disadvantaged Business Enterprise (DBE) Participation.

Type or print legibly

Name of DBE	DBE Address	Description of Work	Proposed Amount
Total DBE Participation			\$

1. Control No. «CN»
2. Contractor's DBE Liaison Officer _____
3. Total Amount of the Bid \$ _____
- **4. DBE Participation Percentage _____ % of line 3.

*Written confirmation from the DBE that is participating in the contract is required. See Form A-644.

** If the contract goal is not met, evidence of "Good Faith Efforts" must be provided. The bidder must show that it took all necessary and reasonable steps to achieve a DBE goal or other requirement by the scope, intensity and appropriateness

I will abide by the Disadvantaged Business Enterprise (DBE) goal set forth for this project and hereby submit the names of the DBE firms that will participate in this project. Substitution(s) will not be allowed without prior submission of written justification to the Project Manager for approval. I understand that failure to meet the goal may result in Liquidated Damages for the difference between the DBE goal and the actual DBE participation achieved.

This statement is my assurance that _____ agrees to comply with the requirements of
(name of firm)

49 CFR Part 26, and the New Mexico Department of Transportation's Disadvantaged Business Enterprise Program, and all the requirements contained therein.

Date _____

Signature of Company Official _____

**New Mexico Department of Transportation
DISADVANTAGED BUSINESS ENTERPRISE (DBE) PARTICIPATION**

Control No. _____

[illegible]

***IF ANY FIRM LISTED ABOVE IS A MATERIAL SUPPLIER, BUT NOT THE MANUFACTURER, THE CONTRACTOR MAY CREDIT ONLY 60% OF THE EXPENDITURE TO THE SUPPLIER, FOR FINAL PAYMENT. THE PRIME CONTRACTOR MAY CERTIFY THAT FINAL PAYMENT WILL BE MADE TO DBE UPON HIS RECEIPT OF PAYMENT.**

I affirm that I am an authorized representative of _____, hereinafter "DBE Firm".
Name of DBE Firm

Signature of Authorized DBE Representative

Printed Name of Authorized DBE Representative

Further, I affirm my participation in the contract for _____
Name of Contractor

Subscribed and sworn to before me this _____ day of _____, 20_____.

Notary Seal

Notary Public

My Commission expires: _____