



**STATE OF FLORIDA DEPARTMENT OF
TRANSPORTATION**

DISADVANTAGED BUSINESS ENTERPRISE

PROGRAM PLAN

Updated on September 30, 2019

**Equal Opportunity Office
605 Suwannee Street, MS- 65
Tallahassee, Florida 32399
Phone: (850) 414-4747**

FLORIDA DEPARTMENT OF TRANSPORTATION DISADVANTAGED BUSINESS ENTERPRISE PROGRAM

SUBPART A - GENERAL Objectives [\(Part 26.1\)](#)

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

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

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

[The Manager of FDOT's Equal Opportunity Office has been designated as the DBE Liaison Officer](#). In that capacity, the Manager of FDOT's Equal Opportunity Office is responsible for implementing all aspects of the DBE Program. Implementation of the DBE Program is accorded the same priority as compliance with all other legal obligations incurred by FDOT in its financial assistance agreements with the USDOT. FDOT's DBE Program Plan applies to contractors, consultants and local agencies receiving Federal funds through FDOT.

Application ([Part 26.3](#))

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

1. Federal-aid highway funds authorized under Titles I (other than Part B) and V of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Pub. L. 102-240, 105 Stat. 1914, or Titles I, III, and V of the Transportation Equity Act for the 21st Century (TEA-21), Pub. L. 105-178, 112 Stat. 107. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.
2. Federal transit funds authorized by Titles I, III, V and VI of ISTEA, Pub. L. 102-240 or by Federal transit laws in Title 49, U.S. Code, or Titles I, III, and V of the TEA-21, Pub. L. 105-178. Titles I, III, and V of the Safe, Accountable, Flexible, Efficient Transportation Equity Act: A Legacy for Users (SAFETEA-LU), Pub. L. 109-59, 119 Stat. 1144; and Divisions A and B of the Moving Ahead for Progress in the 21st Century Act (MAP-21), Pub. L. 112-141, 126 Stat. 405.
3. Airport funds authorized by [49 U.S.C. 47101](#), *et seq.*
4. Federal Transit Administration (FTA) and Federal Aviation Administration (FAA) funds pursuant to [49 CFR Part 26.45](#) (a)(2).

The DBE Program does not apply to:

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; or
2. Any contract that is not USDOT-assisted

Definitions of Terms ([Part 26.5](#))

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

- (1) Except as otherwise provided in 13 CFR part 121, concerns are affiliates of each other when, either directly or indirectly:
 - (i) One concern controls or has the power to control the other; or
 - (ii) A third party or parties controls or has the power to control both; or

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

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

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

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

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

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

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

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

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

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

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

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

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

- (1) That is at least 51 percent owned by one or more individuals who are both socially and economically disadvantaged or, in the case of a corporation, in which 51 percent of the stock is owned by one or more such individuals; and
- (2) Whose management and daily business operations are controlled by one or more of the socially and economically disadvantaged individuals who own it.

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

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

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

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

Indian tribe means any Indian tribe, band, nation, or other organized group or community of Indians, including any ANC, which is recognized as eligible for the special programs and services provided by the United States to Indians because of their status

as Indians, or is recognized as such by the State in which the tribe, band, nation, group, or community resides. See definition of “tribally-owned concern” in this section.

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

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

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

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

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

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

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

Primary industry classification means the most current North American Industry Classification System (NAICS) designation which best describes the primary business of a firm. The NAICS is described in the [North American Industry Classification Manual—United States, which is available on the Internet via the U.S. Census Bureau.](#)

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

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

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

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

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

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

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

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

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

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

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

Socially and economically disadvantaged individual means any individual who is a citizen (or lawfully admitted permanent resident) of the United States and who has been subjected to racial or ethnic prejudice or cultural bias within American society because of his or her identity as a member of groups and without regard to his or her individual

qualities. The social disadvantage must stem from circumstances beyond the individual's control.

- (1) Any individual who a recipient finds to be a socially and economically disadvantaged individual on a case-by-case basis. An individual must demonstrate that he or she has held himself or herself out, as a member of a designated group if you require it.
- (2) Any individual in the following groups, members of which are rebuttably presumed to be socially and economically disadvantaged:
 - (i) "Black Americans," which includes persons having origins in any of the Black racial groups of Africa;
 - (ii) "Hispanic Americans," which includes persons of Mexican, Puerto Rican, Cuban, Dominican, Central or South American, or other Spanish or Portuguese culture or origin, regardless of race;
 - (iii) "Native Americans," which includes persons who are enrolled members of a federally or State recognized Indian tribe, Alaska Natives, or Native Hawaiians;
 - (iv) "Asian-Pacific Americans," which includes persons whose origins are from Japan, China, Taiwan, Korea, Burma (Myanmar), Vietnam, Laos, Cambodia (Kampuchea), Thailand, Malaysia, Indonesia, the Philippines, Brunei, Samoa, Guam, the U.S. Trust Territories of the Pacific Islands (Republic of Palau), Republic of the Northern Marianas Islands, Samoa, Macao, Fiji, Tonga, Kiribati, Tuvalu, Nauru, Federated States of Micronesia, or Hong Kong;
 - (v) "Subcontinent Asian Americans," which includes persons whose origins are from India, Pakistan, Bangladesh, Bhutan, the Maldives Islands, Nepal or Sri Lanka;
 - (vi) Women;
 - () Any additional groups whose members are designated as socially and economically disadvantaged by the SBA, at such time as the SBA designation becomes effective.
- (3) Being born in a particular country does not, standing alone, mean that a person is necessarily a member of one of the groups listed in this definition.

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

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

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

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

Acronyms Specific to FDOT [\(Part 26.5\)](#)

<http://www.dot.state.fl.us/equalopportunityoffice/Acronyms%20Specific%20to%20FDOT%20Part%2026.5.pdf>

Nondiscrimination [\(Part 26.7\)](#)

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

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

Record Keeping and Reports [\(Part 26.11\)](#)

FDOT will transmit to the Operating Administrations the Uniform Report of DBE Awards or Commitments and Payments by June 1st for the first six months (October-March) of the Federal Fiscal Year and by December 1st for the last six months (April-September) of the Federal Fiscal Year in the format included in 49 CFR Part 26, [Appendix B](#).

FDOT will continue to provide data about the DBE Program to USDOT as directed by USDOT OAs and will provide to USDOT updates of any significant changes to its DBE Program.

FDOT maintains a bidders list through the [Equal Opportunity Compliance \(EOC\)](#) system. The bidders list consists of comprehensive bid information from all DBE and non-DBE firms that bid or quote on FDOT contracts. The purpose of this requirement is to allow use of the bidder's list approach to calculating overall goals. Instructions for entering the bidders list can be found on the [EOC webpage](#). FDOT collects this information daily through contract clauses, requiring all bidders to report the names and addresses of firms furnishing quotes. The information is requested from all prime contractors and consultants. FDOT maintains records documenting a firm's compliance with the federal regulations in a secured file room to ensure confidentiality. FDOT keeps a complete application package for each certified firm and all no change declarations, change notices, and on-site reviews. These records are retained in accordance with applicable record retention requirements. Other certification or compliance related records are retained for a minimum of three (3) years unless otherwise provided by applicable record retention requirements, whichever is longer.

On behalf of the Florida Unified Certification Program, FDOT will report to the USDOT's Office of Civil Rights by January 1st of each year the percentage and location of certified DBE firms in the Florida UCP Directory controlled by the following:

1. Women;
2. Socially and economically disadvantaged individuals (other than women); and
3. Individuals who are women and are otherwise socially and economically disadvantaged individuals.

Assurance Statements [\(Part 26.13\)](#)

Each financial assistance agreement FDOT signs with a DOT operating administration (or a primary recipient) includes the following assurance: The recipient shall not discriminate on the basis of race, color, national origin, or sex in the award and performance of any DOT-assisted contract or in the administration of its DBE program or the requirements 49 CFR 26. The recipient shall take all necessary and reasonable steps under 49 CFR 26 to ensure nondiscrimination in the award and administration of DOT-assisted contracts. The recipient's DBE program, as required by 49 CFR 26 and as approved by DOT, is incorporated by reference in this agreement. Implementation of this program is a legal obligation and failure to carry out its terms shall be treated as a violation of this agreement. Upon notification to the recipient of its failure to carry out its approved program, FDOT may impose sanctions as provided for under 49 CFR 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.).

Each contract FDOT signs with a contractor (and each subcontract the prime contractor signs with a subcontractor) includes 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 26 in the award and administration of DOT assisted contracts. Failure by the contractor to carry out these requirements is a material breach of this contract, which may result in the termination of this contract or such other remedy as the recipient deems appropriate. This may include, but is not limited to:

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

This assurance language is included in Section 7-24.2 of FDOT's [Standard Specification for Road and Bridge Construction](#). *(The part in italics above will be included in FDOT's Standard Specifications effective January 1, 2017).*

SUBPART B – ADMINISTRATIVE REQUIREMENTS FOR DBE PROGRAMS FOR FEDERALLY-ASSISTED CONTRACTING DBE Program Plan and Updates [\(Part 26.21\)](#)

As authorized, FDOT will continue to carry out this program until all funds from USDOT financial assistance have been expended. FDOT will submit to USDOT for approval updates when there have been significant changes to the current approved Plan. All sub-recipients of FHWA USDOT funds, including local agencies, are required to comply with FDOT's DBE Program Plan.

Policy Statement [\(Part 26.23\)](#)

The DBE Utilization, [DBE Policy Statement](#), was originally distributed to DBE and non-DBE business communities that perform work for FDOT on USDOT-assisted contracts through emails to all certified DBEs, prime contractors and consultants. The policy statement has been approved and signed by the FDOT DBE Liaison Officer.

DBE Liaison Officer (DBELO) ([Part 26.25](#))

FDOT has designated the following individual as the DBE Liaison Officer (DBELO): Victoria Smith, Manager, Equal Opportunity Office, 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4746. In that capacity, the Manager is responsible for implementing all aspects of the DBE Program and ensuring that FDOT complies with all provisions of 49 CFR Part 26. The Manager has direct, independent access to the Secretary of FDOT concerning DBE Program matters. The Equal Opportunity Office [organization chart](#) shows two (2) sections responsible for administration: DBE and Small Business Development Programs, and Civil Rights Programs.

The DBELO is responsible for developing, implementing and monitoring the DBE Program, in coordination with other appropriate officials, and for managing FDOT's civil rights programs. Other duties and responsibilities include the following:

1. Administer and provide strategic direction and planning for the Equal Opportunity Office.
2. Advise the Secretary of FDOT and FDOT's Executive Committee on matters impacting DBE policy and achievement;
 - a) DBE Achievement Reports
 - b) Economic Parity Reports
 - c) Business Development Initiative Reports
3. Act as a liaison between FDOT, the Federal Highway Administration (FHWA), the Federal Transit Administration (FTA), and contractors in compliance matters;
4. Maintain current information on regulations and laws concerning compliance with Federal and State DBE programs;
5. Review and approve UCP DBE certification applications, investigatory findings, and access to the Equal Opportunity Compliance (EOC) system via the Automated Access Request Form (AARP);
6. Develop and interpret plans, reports and goals;
 - a) Affirmative Action Plan
 - b) DBE Program Plans and Goals for FHWA and FTA
 - c) FHWA Reports
 - d) FTA Reports
7. Develop procedures and provides guidance for technical assistance and training to the District Contract Compliance Managers and Resident Compliance Specialists.

The DBE and Small Business Development Program Manager is responsible for the following duties with respect to administration of the DBE goals, certification, outreach, supportive services, assistance programs, utilization, and reports:

1. Work with FDOT's Office of the General Counsel as required in reviewing certification decisions and compliance with this program;
2. Certify DBEs according to the criteria set by USDOT and is the lead liaison for the Florida Unified Certification Program;
3. Maintain FDOT's updated directory of certified DBEs;
4. Ensure all applications for DBE certification are timely processed pursuant to 49 CFR Part 26;
5. Develop policies, procedures, rules and guidelines for DBE certification;
6. Review all DBE applications, coordinate with others as necessary, and make recommendations to the Manager, Equal Opportunity Office concerning certification of applicants as DBEs;
7. Timely assign DBE applications to the DBE Certification staff and coordinate on site reviews;
8. Timely notify certified DBEs to submit their annual no change declaration on the anniversary date of the firm's initial certification as a DBE;
9. Timely review annual no change declarations for continued eligibility to participate in the DBE Program, and make recommendations to the Manager, Equal Opportunity Office to commence removal proceedings if the firm no longer satisfies eligibility criteria;
10. Supervise the DBE Certification staff and provide guidance on certification issues.
11. Cooperate with the USDOT operating administration when directed to initiate proceedings to remove certification.
12. Produce monthly Business Development Initiative reports that the DBELO will present to the Executive Board;
13. Administer and oversee the Equal Opportunity Compliance (EOC) system, and ensure its capability to manage DBE and MBE compliance reporting;
14. Gather and report statistical data and other information as required by USDOT;
15. Work with all departments and districts in achievement of the FDOT's overall annual goal;
16. Develop policies and procedures related to the DBE Program;
17. Analyze FDOT's progress toward goal attainment and identify new and innovative methods to achieve the DBE goal in a race neutral environment;
18. Develop processes and procedures for gathering and reporting statistical data and other information as required by USDOT and FDOT;
19. Produce monthly performance reports that will be presented to the Executive Board, reports on contractors/consultants and other reports as necessary;

20. Market the DBE Program to contractors and consultants and work with others in the transportation industry;
21. Plan and participate in DBE training seminars and workshops;
22. Serve as a liaison with DBEs and prime contractors;
23. Monitor and provide oversight of the Business Development Initiative (BDI), and provide monthly statistical reports to the DBE Liaison Officer; and
24. Monitor and provide program oversight to the supportive services providers.

The Civil Rights Program Manager is responsible for the following duties with respect to administration and monitoring of contracts, grants and budgets allocated and awarded to assist the DBEs, and the administration of management directed inquires, Title VI and Title VII investigations, and EEO training:

1. Provide guidance, training and technical assistance to the District Contract Compliance Managers and other district personnel regarding issues of commercially useful function;
2. Monitor district activities related to the DBE Program compliance;
3. Supervise the statewide administration of the Equal Opportunity Contract Compliance Program that includes the DBE Program;
4. Investigate all 3rd party complaints received as described in [Part 26.87\(a\)](#) and take the necessary steps as a result of the investigation;
5. Administer and oversee the FDOT DBE Supportive Services Program contracts, and monitor the providers' contract compliance efforts;
6. Execute, administer and manage contracts and grants targeted to assist DBEs;
 - a) Secure appropriate state authorization to expend funds
 - b) Solicit and evaluate bid submissions as appropriate
7. Develop processes and procedures for gathering and reporting statistical data and other information as required by USDOT and FDOT;
8. Ensure compliance with provisions:
 - a) Equal Opportunity Special Provisions
 - b) On-the-Job Training Provisions
 - c) DBE Program Special Provisions
 - d) Consultant Contract Provisions
9. Collect data and develop various plans, reports, policies and documents;
 - a) Affirmative Action Plans
 - b) DBE Plans and Goals for FHWA
 - c) DBE Plans and Goals for FTA
 - d) Policy and legislative revisions
 - e) Compliance Manual
10. Administer, monitor and track all grant funds to ensure appropriate expenditures, and develop reports to applicable entities as required;

11. Gather and report statistical data and other information as required by USDOT;
12. Serve as a liaison with Providers, FHWA and FTA on contracts and grants;
13. Ensure that DBEs are aware of procurement opportunities;
14. Ensure that DBEs are provided information and assistance in preparing bids, obtaining bonding and insurance;
15. Ensure that interested DBEs can receive training in one-on-one basis, on-line or classroom setting;
16. Ensure that outreach is provided to DBEs and community organizations to advise them of contracting opportunities;
17. Provide assistance to the contractors and consultants relative to the DBE Program;
18. Ensure that DBEs are provided with information and assistance in preparing bids, obtaining bonds, financial assistance and insurance; and
19. Produce monthly Economic Parity reports that will be presented to the Executive Board.

DBE Financial Institutions [\(Part 26.27\)](#)

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

[Continental National Bank of Miami](#)

Contact: Sonia Canessa-Gonzalez,
SVP & CFO
1801 Southwest First Street
Miami, FL 33135
Routing and Transit (ABA) Number:
066009456
Phone: (305) 642-2440
Fax: (305) 643-8289

[Interamerican Bank](#)

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

Prompt Payment ([Part 26.29](#) (a))

FDOT complies with [49 CFR 26.29](#) of the federal regulations regarding prompt payment to all subcontractors. Prior to receiving payment, FDOT requires prime contractors to certify on the [Certification Disbursement of Previous Periodic Payment to Subcontractors](#) form that all subcontractors, with the exception of those noted by the contractor as not having been paid for good cause, have received their pro rata share of all previous periodic payments made to date by FDOT for all work, materials and equipment furnished under the contract. These monthly certifications must be submitted monthly and on the average result in estimates being paid by FDOT within 7 days. Under these contractual requirements, subcontractors will be paid within 30 days from receipt of each monthly payment to the prime contractor. The contractual provisions for prompt payment can be found in the [Standard Specifications](#) in 9-5.6 Certification of Payment to Subcontractors. These provisions also require the prime contractor to make final payments to their subcontractors within 30 days of being paid by FDOT. As of October, 2017, prompt payment is included as part of Construction's Contract Compliance Review (CCR) process as follows:

Prompt Payment

The contractor's adherence to the requirements of 49 CFR 26.29 prompt payment. The following is how to determine adherence to this procedure and what steps to take if a noncompliance is discovered: The 30-day time period for payment is required in every contract.

Satisfactory Performance

A contract provision must exist in every contract that requires contractors and subcontractors to pay for satisfactory performance of their contract (completion and acceptance) no later than 30 days from their receipt of payment. Subcontractors should have a clause in their contract to pay lower tier subs within 30 days of receiving their payment from the prime and so forth. The Contract of each contractor and subcontractor participating in the CCR should be reviewed for inclusion of this clause.

Certification Disbursement of Previous Periodic Payment to Subcontractors

Acquire copies of the contractor's last two "Certification Disbursement of Previous Periodic Payment to Subcontractors" (FDOT Form 700-010-38). These forms can be pulled from EDMS.

Proof of Payment

Acquire proof that payment was made to subcontractors within 30 days of receiving payment from the Department. This includes all subcontractors or material suppliers under the prime contractor. The last two certification of disbursements should be verified. (Make sure that at least one DBE and one non-DBE is a part of this disbursement review). Proof can be in the form of canceled check or receipt of payment.

Deficiencies

NOTE: Any deficiencies found in the adherence of 49 CFR 26.29 should be sent to the Department's State Construction Compliance Manager for further action, it would **not** need to remain with the compliance review process.

Return of Retainage ([Part 26.29 \(b\)](#))

FDOT complies with 49 CFR 26.29(b) (2) and does not hold retainage from prime contractors. Instead, FDOT has a contractual provision in Section 9-5.6 of the [Standard Specifications for its contracts with prime contractors which states that contractors shall return all retainage payment to all subcontractors within 30 days after the subcontractor's work has been deemed satisfactorily completed.](#)

Acceptance of Work ([Part 26.29 \(c\)](#))

A subcontractor's work is satisfactorily completed when all the tasks called for in the subcontract have been accomplished and documented as required by FDOT. When FDOT 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.

Monitoring and Enforcement ([Part 26.29 \(d\)](#))

A false statement or omission made in connection with the prompt payment certification is sufficient cause for suspension, revocation, or denial of qualification to bid, and a determination of non-responsibility, and may subject the person and/or entity making the false statement to any and all civil and criminal penalties available pursuant to applicable Federal and State Law. Further, FDOT has a detailed [unpaid bills](#) claim process to address prompt payment or retainage return complaints.

As part of the Quality Assurance Review process, the Equal Opportunity Office includes a review of the prompt payment provisions to ensure compliance of these requirements. This review consists of sampling federally funded contracts to review payments to subcontractors. FDOT's Office of Inspector General also includes a review of prompt payment in their review of construction contracts. Additionally, as an affirmative step to monitoring and enforcing prompt payment and retainage requirements, FDOT posts prime contractor payment information on the Construction page of the FDOT website <http://www.dot.state.fl.us/construction/estimates/FTPEstimates.shtm> with a link on the Equal Opportunity Office page as well. This is accessible to subcontractors and effective in alerting small business subcontractors to the start of the 30 day clock.

FDOT will also work with the industry and periodically provide notices to both DBEs and to contractors reminding them of prompt payment responsibilities, the penalty for false statements and how to report a prompt payment issue. This information is also routinely reinforced by FDOT's Supportive Services provider and the State DBE Program Coordinator.

Additional Enforcement ([Part 26.29 \(e\)](#))

If the Contractor does not pay all subcontractors for satisfactory performance, FDOT's enforcement mechanism is to withhold any progress or partial payments until the issue is resolved. DBEs should contact the appropriate District Contract Compliance Manager to resolve any issues with prompt payment or return of retainage.

DBE Directory ([Part 26.31](#))

FDOT maintains a [DBE Directory](#) identifying all firms eligible to participate as DBEs. The Directory lists the firm's name, address, telephone number, email address, and the type of work the firm has been certified to perform as a DBE. The DBE Directory is updated daily by FDOT and other Florida Unified Certification Program certifying members. Certifying members are required to update the DBE Directory within three days of a certification decision and will update additional information, such as phone numbers, when notified by the DBE. The Directory can be sorted by NAICS code, work location and physical location. Interested parties may contact the Equal Opportunity Office at 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, or (850) 414-4747 with questions regarding the DBE Directory.

Overconcentration ([Part 26.33](#))

FDOT has not identified or received any concerns related to overconcentration in the construction industry. However, FDOT has received concerns about overconcentration in certain professional services areas, such as geotechnical and survey work types. Overconcentration may result when consultant firms tend to subcontract work to DBEs and other small businesses in certain work types more frequently than others. This places a disproportionate burden on non-small businesses in those areas of work.

FDOT has taken measures to address the concerns of underutilization of small businesses. Instead of encouraging primes to not use small businesses in areas where overconcentration exists, FDOT is encouraging primes to use small businesses in areas where they are underutilized. Underutilization is defined by FDOT as 30% or less DBE and small business utilization level for advertised Work Groups. Underutilization levels

vary by district. The [Under-utilized Work Groups Table](#) is published and maintained by Procurement Office.

Use of underutilized DBEs or small businesses for consultant teams is strongly encouraged. Proposed consultant teaming is a shortlist consideration factor for projects where underutilization has been found. To meet FDOT's goal, consultants are encouraged to propose DBE or small business firms for advertised underutilized Work Types. One DBE or small business firm may be proposed per Work Group. Consultants are requested to list the anticipated use of DBEs and/or Small Business from the Table on a [Professional Services Letter of Response Form \(375-030-22\)](#) (as designated in the advertisement) by checking the box under the under-utilization (UU) column. Failure to list DBEs and/or Small Businesses on the response form shall indicate no proposed utilization.

Business Development Program ([Part 26.35](#))

As part of the DBE Supportive Services funding provided by FHWA, FDOT established a [Business Development Program that is administered by the FDOT DBE Supportive Services Provider. DBEs who have submitted a bid on a project as a sub or prime for any work associated with roadway and bridge work \(FDOT and Local Public Agency\) may apply to participate in the \[Business Development Program \\(BDP\\)\]\(#\) for more detailed, technical training tailored to their individual needs.](#)

Monitoring and Enforcement Mechanisms ([Part 26.37](#))

[FDOT has the authority in Specification 9-5.3.2 to ensure compliance with DBE requirements by withholding progress payments until the Contractor has satisfied compliance requirements.](#)

FDOT will bring to the attention of the USDOT any false, fraudulent, or dishonest conduct in connection with the program, so that USDOT can take the steps (e.g., referral to the Department of Justice for criminal prosecution, referral to the USDOT Inspector General, action under suspension and debarment or Program Fraud and Civil Penalties rules) as provided in [49 CFR 26.107](#). FDOT also will consider similar action under state legal authorities, including responsibility determinations in future contracts, removal of firms from the prequalified bidders and consultants' lists, or revocation of DBE certification if applicable, pursuant to Section [337.16](#); [337.105](#); [337.135](#); and [339.0805](#), Florida Statutes.

FDOT monitors compliance with the DBE requirements through district construction staff and provides direction on how to monitor through the Equal Opportunity Office [Construction Contract Compliance \(EOCCC\) Manual. Chapter 2](#) of this Manual is

designed to provide contractors the details of their DBE Program responsibilities and instruct district staff on their monitoring responsibilities. FDOT has also developed a [Commercially Useful Function DBE Monitoring Report](#) that is used by district staff to document and certify FDOT efforts to assess that DBE subcontractors are performing commercially useful functions. FDOT has revised the EOCCC Manual and some of the changes include increasing the frequency in DBE monitoring and delineating parameters and timeframes for compliance monitoring. FDOT has implemented a [DBE Trucking Ledger to track payments made to DBE subcontractors for DBE credit](#). The DBE Trucking Ledger is required to substantiate DBE utilization and credit reported by prime contractors. FDOT has elected to [use 49 CFR 26.55 \(d\) \(5\)](#) in counting DBE credit for trucking and has received approval from the local FHWA Division Office for this practice.

For professional service contracts, the DBE commitments and payments reported will be monitored through a random selection process. The Equal Opportunity Office randomly selects 10% of the professional services contracts and verifies with the DBE firms that the dollars reported by the prime consultant are accurate and correspond to work self-performed by the DBE. If a possible CUF issue is identified, further review may be warranted.

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

FDOT uses the Equal Opportunity Compliance System (EOC) to maintain a real time, running tally of actual DBE payments on each contract. Reporting commitments and actual payments in the EOC system is a contract requirement, which is monitored and approved at least monthly by District Contract Compliance Managers. EOC automatically compares the commitments and payments entered and will adjust the commitment amount to reflect the actual payments when the contract is completed.

Fostering Small Business Participation ([Part 26.39](#))

Due to the rising prices in bids and limited competition between 2003 thru 2005, FDOT implemented in 2006 a [Business Development Initiative \(BDI\)](#) to cultivate small businesses by providing them opportunities and support to move from subcontracting and sub-consulting to prime contracting and consulting roles. This race neutral initiative is intended to fulfill FDOT's long term goal of growing small businesses, increasing competition, lowering prices and supporting the contracting needs.

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

1. Meet the small business definition as defined by FDOT.
2. Submit a notarized affidavit on a form provided by FDOT attesting to meeting the definition of a small business.
3. Provide a listing of contracts on which the firm has performed either as a prime or subcontractor or sub-consultant.

All Florida UCP DBE certified firms must meet the size standards to be eligible to participate in the BDI. Some of the strategies used that would provide an opportunity for businesses who would not typically bid on FDOT contracts are:

1. Reserve construction, maintenance, and professional services contracts under \$1,500,000 for small businesses;
2. Modify the prequalification requirements for projects between \$250,000 and \$1,500,000.
3. Waive bonding requirements for non-critical projects under \$250,000 and/or reduce bid bond amount.
4. Revise liability insurance requirements.
5. Reduce cost of Construction Training Qualification Program courses for small businesses.

The Equal Opportunity Office monitors the program by:

1. [Updating the BDI list of construction and professional services project on a monthly basis,](#)
2. Educating and encouraging the use of the BDI to include LAP contracts,
3. Encouraging the districts to identify additional contracts that can be reserved for small businesses and
4. Providing updates on the progress of the program to the Executive Board.

The BDI has been successful in assisting small firms to become a prime and in growing their business to eventually compete on larger contracts. Also, the BDI has been instrumental in creating much needed jobs. The program was codified by the Florida Legislature in 2016, becoming an official FDOT manner of doing business ([337.027 FS](#)).

Quotas ([Part 26.43](#))

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

SUBPART C – GOALS, GOOD FAITH EFFORTS, AND COUNTING Overall Goals ([Part 26.45](#))

FDOT's FHWA DBE goal for federal fiscal years 2018 - 2020 is **10.65%**.

FDOT's [FTA DBE goal](#) for federal fiscal years 2018 -2020 is **11.31%**.

Shortfall Analysis ([Part 26.47 \(c\)](#))

If the awards and commitments shown on FDOT's Uniform Report of Awards or Commitments and Payments at the end of any federal fiscal year are less than the overall goal for that fiscal year, FDOT will:

1. Analyze in detail the reasons for the difference between the overall goal and the awards and commitments in that fiscal year;
2. Establish specific steps and milestones to correct the problems identified in the analysis that will enable FDOT to meet fully the DBE goal for the new fiscal year;
3. FDOT will submit, within 90 days of the end of the fiscal year, the analysis and corrective actions developed to the appropriate operating administration for approval.

Contract Goals ([Part 26.51](#))

FDOT has successfully implemented a 100% race neutral DBE Program since federal fiscal year 2001. In accordance with [49 CFR 26.47 \(c\)](#), should FDOT fail to achieve the goal, it will submit a detailed analysis and action plan to the USDOT operating administration. Should such a plan include the introduction of race conscious measures, FDOT will consider use of the following methods:

1. FDOT would use preference points for subcontracting to DBEs on Design Build solicitations and other similar solicitations that are awarded based on a point system as opposed to the low bid process. This would allow 5% of the total points to be awarded if the proposer achieves FDOT's current overall DBE goal in their proposal. Additional bonus points may also be awarded if the proposer exceeds the current DBE goal.

2. FDOT would impose contract goals only on those contractors or consultants that have historically showed very low DBE participation. This method would allow the contractors and consultants that have historically showed high DBE participation to continue to select those contracts and opportunities for DBE participation that best meet their needs. This approach would also provide the necessary incentive for contractors and consultants to increase and maintain a higher DBE participation. Those contractors and consultants with low DBE participation would be identified through the annual 'letter grades' that are based on their DBE participation on all contracts awarded throughout the federal fiscal year. Only those contractors or consultants receiving a 'D' or 'F' would have contract goals on contracts they are awarded.

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

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

Good Faith Efforts ([Part 26.53](#))

FDOT treats bidder/proposers' compliance with good faith efforts requirements as a matter of responsiveness. However, under the FDOT's race neutral program a bid will not be rejected as non-responsive based on the percentage of DBE utilization. Bidders will, however, be required to submit anticipated DBE utilization information.

Also, FDOT's DBE Specification in Section 7-24 of the [Standard Specifications requires](#) the contractor prior to the award of the contract to have an approved [DBE Affirmative Action Plan \(DBE AA Plan\) that expresses a commitment to use DBEs in all aspects of](#) contracting to the maximum extent feasible and to describe their affirmative action methods. The DBE AA Plan becomes a part of the awarded contract.

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

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

If a DBE goal is placed on a contract, the bidder/proposer must either meet the DBE goal or document the good faith efforts to meet the goal. Examples of good faith efforts are found in [Appendix A to 49 CFR 26](#).

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

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

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

Manager or other individuals as delegated by the appropriate District Secretary. If FDOT does not approve the replacement, the contractor shall not be entitled to any payment for work or material unless it is performed or supplied by the listed DBE.

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

Counting DBE Participation ([Part 26.55](#))

FDOT will count DBE participation toward overall and contract specific goals as provided in [49 CFR 26.55 on a contract by contract basis. In a race neutral environment, FDOT requires contractors to submit their DBE Participation at or before \[the preconstruction conference through the FDOT's internet based EOC system.\]\(#\)](#) Consultants are required to enter their DBE participation at the time of contract execution. For very large construction contracts that spread over multiple years, FDOT may split up the contract dollars and the DBE participation for each year of the contract. In other contracts where a concessionaire is the prime contractor, FDOT may allow the concessionaire to report their DBE Participation as they enter into contracts to perform the work. For district-wide contracts, FDOT is reporting DBE participation based upon the actual payment by FDOT and the actual payments made to the DBE as reported by the prime in EOC. FDOT requires contractors and consultants to provide updated information on their DBE utilization during the life of the contract. For changes made to DBE utilization in contracts that were previously reported to the Operating Administration, FDOT will count that DBE participation during the current federal fiscal year.

FDOT requires all prime contractors and consultants to report monthly in the FDOT's EOC System all payments made to DBEs and any retainage held. These requirements and instructions can be found on the [EOC webpage](#). When contracts are closed, the actual payments to DBEs are included in the semi-annual report provided to the FHWA.

FDOT [Standard Specifications](#) 7-24.5 specifies when DBE credit shall be awarded for work performed by a DBE. DBE credit can only be awarded for work actually performed by DBEs themselves for the types of work for which they are certified. When reporting DBE commitments, primes are instructed to only include the dollars that a DBE is expected to earn for work they perform with their own workforce and equipment.

The following is FDOT's Joint Check provision as shown in the Standard Specifications 7-24.5(7) for FDOT's construction contracts:

Contractors wishing to use joint checks involving DBE credit must provide written notice to the District Contract Compliance Office prior to issuance of the joint check. The Contractor must also provide a copy of the notice to the DBE subcontractor and maintain a copy with the project records.

When a DBE performs as a participant in a joint venture, 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 counted for DBE credit.

In accordance with the [EEO Construction Contract Compliance Manual \(Manual\)](#), a Resident Compliance Specialist (RCS) monitors the progress of the project and DBE participation. This effort is accomplished in conjunction with the Project Administrator and Inspector who have daily contact with the contractor and subcontractors, monitoring monthly payments, and payroll documents, interviews with DBE subcontractors, employees, and observations by the Project Administrator and Inspector. The RCS will be able to determine if the prime is utilizing an identified DBE and if the DBE subcontractor is providing a commercially useful function. The RCS uses [Commercially Useful Function DBE Monitoring Report \(CUF Report\) \(Form 275-021-18\)](#) to document this process. If problems are identified, the RCS discusses the problems with the Resident Engineer and the DCCM.

The Manual also states that when a DBE is presumed not to be performing a Commercially Useful Function (CUF), the DBE may present evidence to rebut this presumption. FDOT may determine that the DBE is performing a CUF given the type of work involved and normal industry practices. FDOT's decisions on CUF matters are subject to review by the concerned operating administration, but are not administratively appealable to USDOT.

The DBE may also lease trucks from a non-DBE or other business enterprise, including owner operators. The value of services from non-DBE trucking may be equal to or less than the value of services provided by all DBE trucks; the value of non-DBE trucking cannot exceed the total value of DBE trucking.

DBE utilization that includes off-site hauling requires the submission to the RCS of a contractual document (sublet, subcontract, rental agreement etc.) describing the scope of trucking operations and the commissions/fee rate to verify DBE utilization calculations. Project staff uses the [Trucker's Observation & Verification \(Form 700-01061\)](#) to verify both the owner-operator and the DBE status of individual trucks.

FDOT requires prime contractors reporting commitments for DBE trucking to submit each month [a DBE Trucking Certification \(FDOT Form 275-030-14\)](#) reflecting actual trucking operations. The report is due beginning with the first month of the contract and ending the last month of the contract; inactive months must be reported as such.

For materials or supplies obtained from a DBE manufacturer, FDOT counts 100 percent of the cost of the materials or supplies toward the goal. If the materials or supplies are purchased from a DBE regular dealer, 60 percent of the cost of the materials or supplies is counted toward DBE goals. For transaction facilitators, only commissions and fees are counted.

In a race neutral environment, FDOT does not have contract specific DBE goals. DBE participation is counted when the service is provided on the day that a DBE is certified. When a DBE is no longer certified, DBE participation will no longer be counted on the day the firm was removed from the DBE Directory. The only exception is when the DBE is removed for exceeding the small business size standards. In this case, DBE participation will continue to be counted until that contract is completed.

SUBPART D – CERTIFICATION STANDARDS Burdens of Proof [\(Part 26.61\)](#)

In determining whether to certify a firm as eligible to participate as a DBE, FDOT will apply the standards of 49 CFR 26.61. The firm seeking certification has the burden of demonstrating to FDOT, by a preponderance of the evidence, that it meets the requirements of this subpart concerning social disadvantage, business size, ownership, and control.

FDOT will rebuttably presume that members of the designated groups identified in 49 CFR 26.67(a) are socially and economically disadvantaged. This means they do not have the burden of proving to FDOT 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(a). Applicants do have the obligation to provide FDOT with information concerning their economic disadvantage (see 49 CFR 26.67). As required in 49 CFR Part 26.5, Native Americans must provide documentation of being an enrolled member of a federally or State recognized Indian Tribe, Alaska Natives, or Native Hawaiians. FDOT accepts tribal cards or verification with the State of Florida's Bureau of Indian Affairs as documentation.

FDOT will make determinations concerning whether individuals and firms have met their burden of demonstrating ownership, control, and social and economic disadvantage by considering all the facts in the record, viewed as a whole.

Group Membership ([Part 26.63](#))

If, after reviewing the signed notarized statement of membership in a presumptively disadvantaged group (see 49 CFR 26.61(c)), FDOT has a well-founded reason to question the individual's claim of membership in that group, FDOT will require the individual to present additional evidence that he or she is a member of the group. FDOT will provide the individual a written explanation of its reasons for questioning his or her group membership and a written request for additional evidence. In determining a group membership classification, FDOT will consider whether the person has held himself out to be a member of the group over a long period of time prior to application for certification and whether the person is regarded as a member of the group by the relevant community. FDOT may require the applicant to produce appropriate documentation of group membership.

Business Size Determinations ([Part 26.65](#))

To be an eligible DBE, a firm (including its affiliates) must be an existing small business, as defined by Small Business Administration (SBA) standards. FDOT will apply current SBA business size standard(s) found in [13 CFR 121](#) appropriate to the type(s) of work the firm seeks to perform in DOT-assisted contracts.

A firm is not an eligible DBE in any federal fiscal year if the firm (including its affiliates) has had average annual gross receipts, as defined by SBA regulations (see [13 CFR 121.402](#)), [over the firm's previous three fiscal years, in excess of \\$23.98 million or the](#) adjusted amount as determined by the USDOT.

Determination of Social and Economic Disadvantage ([Part 26.67](#))

A qualifying social disadvantaged person whose personal net worth exceeds \$1.32 million shall not be deemed to be economically disadvantaged. FDOT requires 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. FDOT will require each individual who makes this certification to support it with a signed, notarized statement of personal net worth, with appropriate supporting documentation. The personal net worth form is found in the DBE Certification application and will be verified against personal tax returns. Notwithstanding any

provision of federal or state law, FDOT will not release an individual's personal net worth statement or any documents pertaining to it to any third party without the written consent of the submitter. If the statement of personal net worth shows that the individual's personal net worth exceeds \$1.32 million, the individual's economic disadvantage is rebutted. FDOT is not required to have a proceeding in order to rebut the DBE's status as economically disadvantaged.

An individual who is not a member of a group presumed to be socially and economically disadvantaged may apply for DBE certification. FDOT will make a case-by-case determination of whether each individual whose ownership and control are relied upon for DBE certification is socially and economically disadvantaged by following the guidance provided in [Appendix E of 49 CFR Part 26](#).

Determination of Ownership ([Part 26.69](#))

In determining whether the socially and economically disadvantaged participants in a firm own the firm, FDOT will consider all the facts in the record, viewed as a whole. To be an eligible DBE, a firm must be at least 51 percent owned by socially and economically disadvantaged individuals. In the case of a corporation, such individuals must own at least 51 percent of the each class of voting stock outstanding and 51 percent of the aggregate of all stock outstanding. In the case of a partnership, 51 percent of each class of partnership interest must be owned by socially and economically disadvantaged individuals. Such ownership must be reflected in the firm's partnership agreement. In the case of a limited liability company, at least 51 percent of each class of member interest must be owned by socially and economically disadvantaged individuals.

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

To support ownership, FDOT will review the information available from the Florida Division of Corporations, meeting minutes, articles of incorporation, by-laws, and investment documentation.

Determination of Control [\(Part 26.71\)](#)

In determining whether socially and economically disadvantaged owners control a firm, FDOT will consider all the facts in the record, viewed as a whole. Only an independent business may be certified as a DBE. An independent business is one the viability of which does not depend on its relationship with another firm or firms. In determining whether a potential DBE is an independent business, FDOT will scrutinize relationships with non-DBE firms, in such areas as personnel, facilities, equipment, financial and/or bonding support, and other resources. FDOT 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.

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

The socially and economically disadvantaged owners must possess the power to direct or cause the direction of the management and policies of the firm and to make day-to-day as well as long-term decisions on matters of management, policy and operations. A disadvantaged owner must hold the highest officer position in the company (e.g., chief executive officer or president). In a corporation, disadvantaged owners must control the board of directors. In a partnership, one or more disadvantaged owners must serve as general partners, with control over all partnership decisions.

Individuals who are not socially and economically disadvantaged may be involved in a DBE firm as owners, managers, employees, stockholders, officers, and/or directors. Such individuals must not, however, possess or exercise the power to control the firm, or be disproportionately responsible for the operation of the firm. The socially and economically disadvantaged owners of the firm may delegate various areas of the management, policymaking, or daily operations of the firm to other participants in the firm, regardless of whether these participants are socially and economically disadvantaged individuals. Such delegations of authority must be revocable, and the socially and economically disadvantaged owners must retain the power to hire and fire any person to whom such authority is delegated. The managerial role of the socially and economically disadvantaged owners in the firm's overall affairs must be such that the recipient can reasonably conclude that the socially and economically disadvantaged owners actually exercise control over the firm's operations, management, and policy.

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

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

FDOT 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. FDOT may determine that a firm is controlled by its socially and economically disadvantaged owner although that owner's remuneration is lower than that of some other participants in the firm.

In 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. In this case, FDOT will denote the firm as a 'part time' business in the DBE Directory.

FDOT 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. The specific types of work granted are narrowly tailored to the SBA [NAICS codes](#) found on the SBA webpage and [descriptions](#) found on the Census Bureau webpage and based on the specific experience of the qualifying owners.

To become certified in an additional type of work, the firm need demonstrate to FDOT only that it's socially and economically disadvantaged owners are able to control the firm with respect to that type of work. FDOT may not, in this situation, require that the firm be recertified or submit a new application for certification, but FDOT will verify the disadvantaged owner's control of the firm in the additional type of work.

The types of work a firm can perform (whether on initial certification or when a new type of work is added) shall be described via work codes that include the most specific available NAICS code for that type of work with an additional three digit extension. Firms and FDOT must check carefully to make sure that the work codes are kept up-to-date and accurately reflect work which the FDOT has determined the firm's owners can control. The firm bears the burden of providing detailed company information FDOT needs to make an appropriate work code designation. If a firm believes that there is not a work code that fully or clearly describes the type(s) of work in which it is seeking to be certified as a DBE, the firm may request that FDOT, in its certification documentation, supplement the assigned code(s) with a clear, specific, and detailed narrative description of the type of work in which the firm is certified.

Other Rules Affecting Certification ([Part 26.73](#))

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

SUBPART E – CERTIFICATION PROCEDURES Unified Certification Program ([Part 26.81](#))

[The Florida Unified Certification Program \(UCP\) agreement](#) was approved by the USDOT on March 25, 2004. As needed, this Agreement will be updated by Procedure Memorandums as approved by the UCP certifying members. FDOT monitors

compliance and consistency among UCP members through peer reviews. **Certification Procedures** ([Part 26.83](#))

FDOT and the certifying members of the Florida UCP will use the certification standards of [49 CFR 26 Subpart D](#) and the certification procedures of Subpart E to determine the eligibility of firms to participate as DBEs in USDOT-assisted contracts. FDOT will maintain the DBE Directory and all certifying members will add their certified DBEs directly to this Directory.

The Florida UCP has developed a Quality Assurance Review process and will review each certifying member every five years to ensure compliance with the Federal Regulations and the Florida UCP Agreement.

To be certified as a DBE, a firm must meet all certification eligibility standards. FDOT will make certification decisions based on the facts, as a whole, and will certify DBE firms by North American Industry Classification System Codes (NAICS).

The Florida UCP uses the DBE Application form as found in [Appendix F](#) to Part 26. The Florida UCP shall require Native American applicants, as applicable, to submit documentation proving they are enrolled members of a federally or State recognized Indian tribe. The documentation requirements and other certification information can be found at the FDOT website along with the information related to the [Florida Unified Certification Program, instructions on where to submit the DBE application, a Personal Net Worth Statement, a Statement of Social Disadvantage, a Personal Net Worth Worksheet, and](#) No Change Declaration.

FDOT performs an on-site visit to the offices of the DBE firm seeking certification. FDOT interviews the principal officers of the firm and reviews their resumes and/or work histories. FDOT also performs an on-site visit to job sites if there are such sites on which the firm is working at the time of the eligibility investigation and if such a visit is feasible. FDOT may rely upon the site visit report of any other recipient with respect to a firm applying for certification. After the initial on-site review for DBE certification, FDOT will conduct updated on-site reviews or telephone updated reviews as needed.

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

FDOT requires all owners of DBEs certified by FDOT to submit, on the anniversary date of their certification, a No Change Declaration. FDOT will notify all currently certified DBE firms of these obligations 90 days prior to the anniversary date of the firm's initial

certification. This notification will inform DBEs that to submit the "[No Change](#)" Declaration, their owners must declare under penalty of perjury that they meet all regulatory requirements of part 26, including personal net worth. Likewise, if a firm's owner knows or should know that he or she, or the firm, fails to meet a part 26 eligibility requirement (e.g., personal net worth), the obligation to submit a notice of change applies.

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

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

For information about the certification process or to apply for certification, firms should contact: the Equal Opportunity Office, 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4747; or Sammy Febres, DBE and Small Business Development Program Manager, 605 Suwannee Street, MS 65, Tallahassee, Florida 32399, (850) 414-4745, E-Mail: samuel.febres@dot.state.fl.us.

Once FDOT has certified a DBE, it shall remain certified until and unless its certification has been removed.

Interstate Certification ([Part 26.85](#))

Effective January 1, 2012, the Florida UCP certifying members will process out-of-state applications in accordance with [49 CFR 26.85 \(c\) & \(d\)](#).

Certifying members shall:

1. Accept from the applicant, a complete copy of the DBE application submitted to their home state, and all of the following: (*Note: The Regulation makes it incumbent on the applicant firm to initially provide this information with its application.*)
 - a. All supporting documents, and any other information they have submitted to the home state, or any other state related to the firms certification(s).
 - b. All affidavits of no change and notices of change submitted to the home state recipient;

- c. All correspondence the firm has had with the home state recipient, or any other recipient, related to DBE status, including denials;
 - d. Any appeal filed with USDOT;
 - e. A sworn or affirmed affidavit that the applicant has submitted all information required by [Part 26.85\(c\)](#). *(Note: In the case where the home state on-site review is more than 3 years old, the applicant must further swear or affirm that the facts on the on-site remain true and correct.)*
2. Immediately check the [Division of Civil Rights \(DOCR\) database](#) and if the applicant firm appears in the DOCR database follow the process outlined in [Part 26.85\(f\)](#).
3. If the application and documents required by [Part 26.85\(c\)](#) are incomplete, notify the applicant, in writing, within 7 days, that it must provide the missing information.
4. Within 7 days of receipt of the information required by [Part 26.85\(c\)](#), request a copy of the site visit review report, any updates to the site visit review and any evaluation of the firm based on the site visit. *(Note: The home state has 7 days to respond.)*
5. Follow the guidance in [Part 26.85\(d\)](#) (2) in making the certification or denial decision.
6. Provide notice to the applicant of either a denial or a certify decision within 60 days following receipt of the information detailed at steps 1-4. *(Note: If the home state's on-site review has not been received within 14 days of your request, the 60 day time frame stops and will restart when the home state responds to your request. The applicant shall be notified within 30 days of the reason for delay.)*
7. If denied certification, issue a Denial letter identifying the specific reasons for the denial and providing the applicant with an opportunity to respond. *(Note: While not specifically referenced in the Regulation, the number of days allowed for the applicant to respond shall be the same as that which is outlined in the individual member's denial process or procedure.)* If the applicant requests a meeting following a denial of certification, schedule the meeting within 30 days of an applicant's request.
8. Issue a written final decision within 30 days of the applicant's written response, or the meeting, whichever is later, and provide the applicant with USDOT appeal rights.
9. Enter the information required by [Part 26.85](#) (f) (1) into the DOCR database, if denied.

Denials of Initial Requests for Certification ([Part 26.86](#))

When FDOT denies a firm's application, the firm may not reapply until 12 months have passed from FDOT's action. When FDOT denies a request by a firm, which is not currently certified with FDOT, to be certified as a DBE, FDOT 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 request. When FDOT makes an administratively final denial of certification concerning a firm, the firm may appeal the denial to the USDOT under [49 CFR 26.89](#).

Removing a DBE's Eligibility ([Part 26.87](#))

In the event FDOT proposes to remove a DBE's certification, FDOT will follow procedures consistent with [49 CFR 26.87](#). To ensure separation of functions in a removal, FDOT will appoint a Hearing Officer to serve as the decision maker in removal proceedings which are contested by the DBE. The Hearing Officer will not have participated in any way in the decision to commence a removal proceeding against the firm. The Hearing Officer is located in a separate office in FDOT and is knowledgeable about the certification requirements of the DBE Program. Any person may file with FDOT a written complaint alleging that a currently-certified firm is ineligible and specifying the alleged reasons why the firm is ineligible. FDOT is not required to accept a general allegation that a firm is ineligible or an anonymous complaint. The complaint may include any information or arguments supporting the complainant's assertion that the firm is ineligible and should not continue to be certified. Confidentiality of complainants' identities will be protected as provided in [49 CFR 26.109\(b\)](#). [The complaint will be forwarded to the EOO Investigations and Compliance](#) Manager who will review FDOT's records concerning the firm, any material provided by the firm and the complainant, and other available information. FDOT may request additional information from the firm or conduct any other investigation that FDOT deems necessary. If FDOT determines, based on this review, that there is reasonable cause to believe that the firm is ineligible, FDOT will provide written notice to the firm that FDOT proposes to find the firm ineligible, setting forth the reasons for the proposed determination. If FDOT determines that such reasonable cause does not exist, FDOT will 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 will specifically reference the evidence in the record on which each reason is based.

If, based on notification by the firm of a change in its circumstances or other information that comes to FDOT's attention, FDOT determines that there is reasonable cause to believe that a currently certified firm is ineligible, FDOT will provide written notice to the

firm that FDOT proposes to find the firm ineligible, setting forth the reasons for the proposed determination. The statement of reasons for the finding of reasonable cause will specifically reference the evidence in the record on which each reason is based.

If the concerned OA determines that information in FDOT's certification records, or other information available to the concerned OA, provides reasonable cause to believe that a firm FDOT certified does not meet the eligibility criteria, the concerned OA may direct FDOT to initiate a proceeding to remove the firm's certification. The concerned OA must provide FDOT and the firm a notice setting forth the reasons for the directive, including any relevant documentation or other information.

When FDOT notifies a firm that there is reasonable cause to remove its eligibility FDOT will give the firm an opportunity for an informal hearing, at which the firm may respond to the reasons for the proposal to remove its eligibility in person and provide information and arguments concerning why it should remain certified. In such a proceeding, FDOT bears the burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards. FDOT will maintain a complete record of the hearing, by means acceptable under state law for the retention of a verbatim record of an administrative hearing. If there is an appeal to USDOT under [49 CFR 26.89](#), FDOT will provide a transcript of the hearing to USDOT and, on request, to the firm. FDOT will retain the original record of the hearing. The firm may elect to present information and arguments in writing, without going to a hearing. In such a situation, FDOT bears the same burden of proving, by a preponderance of the evidence, that the firm does not meet the certification standards, as FDOT would during a hearing.

FDOT will ensure that the decision in a proceeding to remove a firm's eligibility is made by an office and personnel that did not take part in actions leading to or seeking to implement the proposal to remove the firm's eligibility and are not subject, with respect to the matter, to direction from the office or personnel who did take part in these actions. The decision maker will be an individual who is knowledgeable about the certification requirements of FDOT's DBE program and the federal regulations. FDOT will not base a decision to remove eligibility on a reinterpretation or changed opinion of information available to the recipient at the time of its certification of the firm. FDOT may base such a decision only on one or more of the following:

1. Changes in the firm's circumstances since the certification of the firm that renders the firm unable to meet the eligibility standards of this part;
2. Information or evidence not available to FDOT at the time the firm was certified;
3. Information that was concealed or misrepresented by the firm in previous certification actions;
4. A change in the certification standards or requirements of the USDOT since FDOT certified the firm; or

5. A documented finding that FDOT's determination to certify the firm was factually erroneous.

Following FDOT's decision, FDOT will provide the firm written notice of the decision and the reasons for it, including specific references to the evidence in the record that supports each reason for the decision. The notice will inform the firm of the consequences of FDOT's decision and of the availability of an appeal to USDOT under [49 CFR 26.89](#). FDOT will send copies of the notice to the complainant in an ineligibility complaint or the concerned OA that directed FDOT to initiate the proceeding.

A firm remains an eligible DBE during the pendency of FDOT's proceeding to remove its eligibility. The firm does not become ineligible until the issuance of the removal notice. When it removes a firm's eligibility, FDOT will take the following action:

1. When a prime contractor has made a commitment to use the ineligible firm, or FDOT has made a commitment to use a DBE prime contractor, but a subcontract or contract has not been executed before FDOT issues the removal notice, the ineligible firm does not count toward a race conscious contract goal or the overall goal for FDOT. If the contract has a race conscious goal, FDOT will direct the prime contractor to meet the contract goal with an eligible DBE firm or demonstrate to FDOT that it has made a good faith effort to do so;
2. If a prime contractor has executed a subcontract with the firm before FDOT 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 if the contract has a DBE race conscious goal. If the contract does not have a race conscious goal or in the case where FDOT 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 FDOT issued the notice of its ineligibility shall not count toward the prime's race neutral goal or FDOT's overall goal.
3. If the DBE's ineligibility is caused solely by its having exceeded the size standard during the performance of the contract, FDOT will continue to count its participation on that contract toward overall and contract goals.

Suspension ([Part 26.88](#))

FDOT will immediately suspend a DBE's certification when an individual owner whose ownership and control of the firm are necessary to the firm's certification dies or is incarcerated.

FDOT will also immediately suspend a DBE's certification when there is adequate evidence to believe that there has been a material change in circumstances that may

affect the eligibility of the DBE firm to remain certified, or when the DBE fails to notify FDOT in writing of any material change in circumstances or fails to timely file a no change declaration. When a firm is suspended, FDOT will immediately notify the DBE of the suspension by certified mail, return receipt requested, to the last known address of the owner(s) of the DBE.

Appealing Certification Decisions to the USDOT [\(Part 26.89\)](#)

Any firm or complainant may appeal FDOT's decision in a certification matter to USDOT.

Such appeals may be sent to:

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

Pending USDOT's decision in the matter, FDOT's decision remains in effect. USDOT does not stay the effect of FDOT's decision while it is considering an appeal. If the company denied eligibility wants to file an appeal, it must send a letter to USDOT within 90 days of the date of FDOT's final decision, containing information and arguments concerning why FDOT's decision should be reversed. 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.

When it receives an appeal, USDOT requests a copy of the recipient's complete administrative record in the matter. If FDOT is the recipient, FDOT will provide the administrative record, including a hearing transcript, 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, FDOT will ensure that such administrative records are well organized, indexed, and paginated. Records that do not comport with these requirements are not acceptable and will be returned to FDOT to be corrected immediately. If an appeal is brought concerning FDOT's certification decision concerning a firm, and that recipient relied on the decision and/or administrative record of another recipient, this requirement applies to both recipients involved.

USDOT makes its decision based solely on the entire administrative record. 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 OA or other appropriate USDOT office; a recipient; or a firm or other private party.

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

USDOT will affirm FDOT's decision unless it determines, based on the entire administrative record, that FDOT's decision is unsupported by substantial evidence or inconsistent with the substantive or procedural provisions concerning certification.

If USDOT determines, after reviewing the entire administrative record, that FDOT's decision was unsupported by substantial evidence or inconsistent with the substantive or procedural provisions concerning certification, USDOT will reverse FDOT's decision and direct FDOT to certify the firm or remove its eligibility, as appropriate. FDOT will take the action directed by USDOT's decision immediately upon receiving written notice of it.

USDOT is not required to reverse FDOT's decision if USDOT determines that a procedural error did not result in fundamental unfairness to the appellant or substantially prejudice the opportunity of the appellant to present its case.

If it appears that the record is incomplete or unclear with respect to matters likely to have a significant impact on the outcome of the case, USDOT may remand the record to FDOT with instructions seeking clarification or augmentation of the record before making a finding. USDOT may also remand a case to FDOT for further proceedings consistent with USDOT instructions concerning the proper application of the certification provisions. USDOT does not uphold FDOT's decision based on grounds not specified in FDOT's decision. USDOT's decision is based on the status and circumstances of the firm as of the date of the decision being appealed.

USDOT will provide written notice of its decision to FDOT, the firm, and the complainant in an ineligibility complaint. A copy of the notice is also sent to any other recipient whose administrative record or decision has been involved in the proceeding. USDOT will also notify the SBA in writing when DOT takes an action on an appeal that results in or confirms a loss of eligibility to any SBA-certified firm. The notice includes the reasons for USDOT's decision, including specific references to the evidence in the record that supports each reason for the decision.

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

Effect of USDOT Certification Appeal Decisions ([Part 26.91](#))

If FDOT is the recipient from whose action an appeal under [49 CFR 26.89](#) is taken, the decision is binding. It is not binding on other recipients. If FDOT is a recipient to which a USDOT determination under 49 CFR 26.89 is applicable, FDOT will take the following action:

1. If USDOT determines that FDOT erroneously certified a firm, FDOT will remove the firm's eligibility on receipt of the determination;
2. If USDOT determines that FDOT erroneously failed to find reasonable cause to remove the firm's eligibility, FDOT will expeditiously commence a proceeding to determine whether the firm's eligibility should be removed, as provided in [49 CFR 26.87](#);
3. If USDOT determines that FDOT erroneously declined to certify or remove the eligibility of the firm, FDOT will certify the firm, effective on the date of FDOT's receipt of the written notice of USDOT's determination;
4. If USDOT affirms FDOT's determination, no further action is necessary.

Where USDOT has upheld another recipient's denial of certification to or removal of eligibility from a firm, or recommended the removal of a firm's eligibility, FDOT may commence a proceeding to remove the firm's eligibility under 49 CFR 26.87 if the firm is certified by FDOT. FDOT will not remove the firm's eligibility absent such a proceeding. Where USDOT has recommended reversal of FDOT's denial of certification to or removal of eligibility from a firm, other recipients must take the DOT action into account in any certification action involving the firm. However, other recipients are not required to certify the firm based on the USDOT decision.

SUBPART F – COMPLIANCE AND ENFORCEMENT ([Part 26.101](#))

In accordance with 49 CFR Part 26.101, FDOT affirms that failure to comply with any program regulation could result in formal enforcement action by USDOT up to and including suspension or termination of FHWA financial assistance. Under 23 CFR 1.36, FHWA may also withhold from FDOT project reimbursement, deny project eligibility, or take other appropriate remedial action.

FDOT also affirms that, consistent with 49 CFR Part 107, USDOT may take enforcement action against any participant firm for false or fraudulent statements or activities. Such action could include but not be limited to suspension, debarment or even referral to USDOJ for prosecution under 18 USC 1001.